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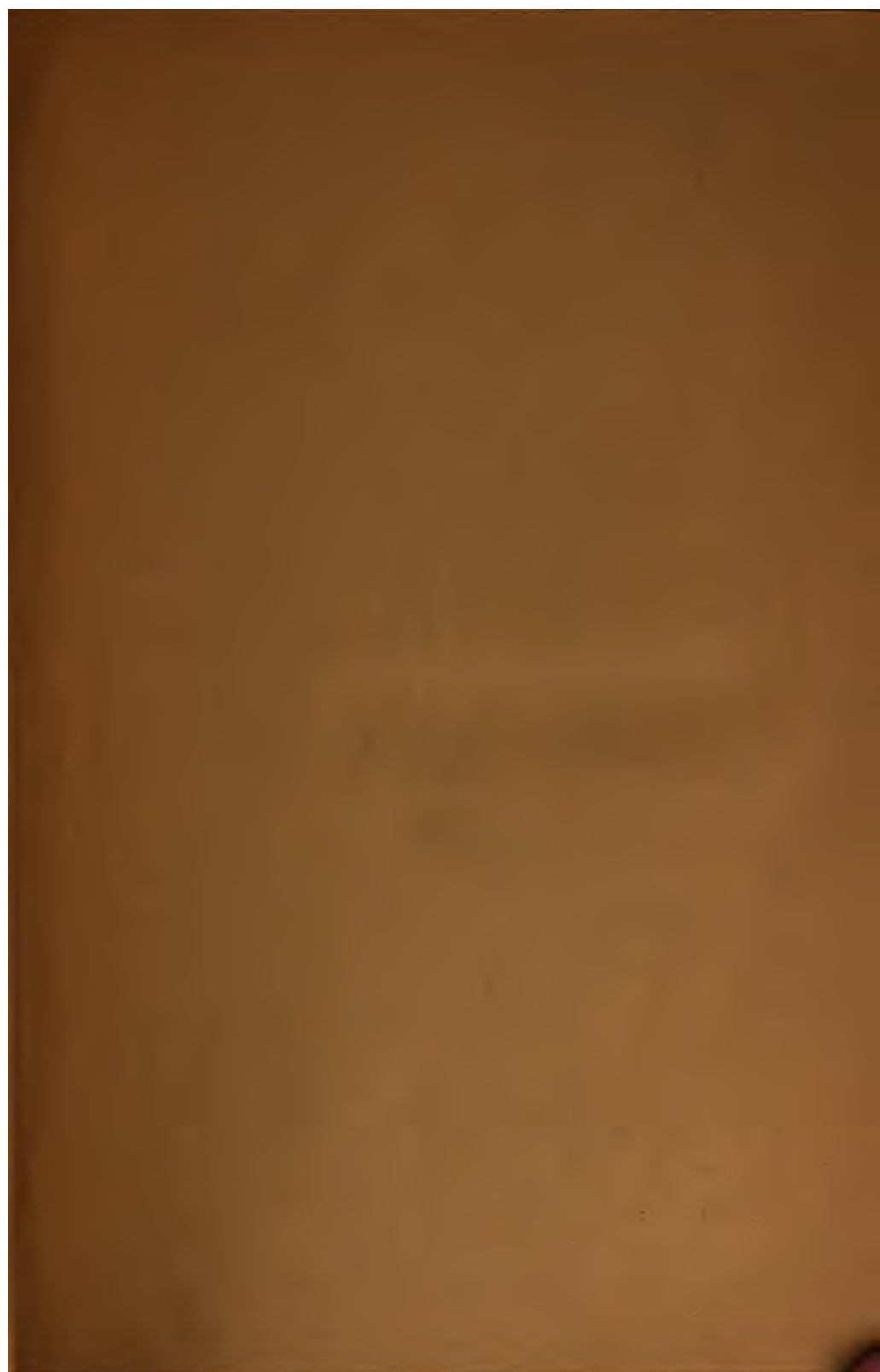
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24

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C<sup>o</sup>#

57  
July 31

THE LAW  
OF  
CONTRABAND OF WAR:

WITH

THE REPORTED CASES TO THE PRESENT TIME,  
AND A SELECTION OF UNREPORTED CASES FROM THE PAPERS OF  
THE LATE RIGHT HON. SIR GEORGE LEE, LL.D.

FORMERLY DEAN OF THE ARCHES, ETC. ETC.

TOGETHER WITH THE

**Foreign Enlistment Act**

AND THE

**BRITISH AND FRENCH PROCLAMATIONS**

RESPECTING THE OBSERVANCE OF NEUTRALITY IN

THE PRESENT WAR IN NORTH AMERICA.

BY

**FREDERIC THOMAS PRATT, D.C.L.**

ADVOCATE, DOCTORS' COMMONS.

8.

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TO  
JOHN LEE, LL.D. F.R.S.  
&c. &c. &c.

OF THE COLLEGE OF ADVOCATES, DOCTORS' COMMONS,  
AND HARTWELL HOUSE, BUCKS,

*The following Pages,*

DERIVING THEIR PRINCIPAL VALUE FROM THE PAPERS OF HIS  
DISTINGUISHED AND LEARNED ANCESTOR,

ARE dedicated

BY HIS OBLIGED AND FAITHFUL FRIEND,

FREDERIC THOMAS PRATT.





## PREFACE.

---

DURING one of the many visits I have had the pleasure of paying to my friend Dr. Lee, at Hartwell, the former residence of his distinguished relative SIR GEORGE LEE, so well known as an eminent Advocate and Judge in the Courts of Civil Law, and particularly from the part he took in framing the celebrated Answer to the Memorial<sup>1</sup>

<sup>1</sup> The following is a brief statement of the circumstances connected with this memorial:—

In the year 1738 the sum of 250,000*l.* had been borrowed by the Emperor Charles VI. of English subjects, and certain mines in Silesia mortgaged for its repayment.

By the treaty of Breslau, in 1742, the Queen of Hungary, then Empress, ceded the province of Silesia, including these mines, to the King of Prussia, who made himself responsible for the repayment of the loan.

In the war which about this time was declared by this country against France and Spain, several vessels belonging to the subjects of Prussia, then a neutral power, had been seized by English privateers, and brought in as prize, on the ground of their being engaged in conveying contraband goods to the enemy.

For these seizures satisfaction was demanded by the King of Prussia, who, on failure of obtaining it,

took possession of the money destined for the repayment of the Silesian loan.

On his part a representation was made by M. Michell, the Prussian Minister, at the Court of London, justifying the proceedings of his own government, upon the ground that the seizures of the Prussian vessels had been made contrary to all principles of international law.

The Memorial alluded to in the text was the triumphant reply of the English Government to this representation, and was generally supposed to have been the joint composition of Sir George Lee and Mr. Murray, afterwards Earl of Mansfield.

The dispute between the two governments was ultimately arranged by mutual concessions on both sides. On the part of Great Britain the following declaration in Council was made with reference to it:—

“In order to put an end to the disputes which have arisen between their Britannic and Prussian Ma-

of the King of Prussia, my attention was directed to a large and valuable collection of papers in the handwriting of SIR GEORGE himself, and relating chiefly to the Court of Admiralty.

Upon examination I found the collection to consist principally of copies of opinions, which he had given on cases submitted to him in the course of his practice, together with very full and copious notes of causes argued in that Court; in most of which he had himself been engaged as Counsel, but in some he appeared to have been only present in attendance upon the Court.

Amongst them was found the case referred to upon two occasions by Lord Stowell as the memorable and famous case of the *Med Gu's Hielpe* (*vide* p. 191.), but of which no report has hitherto been published.<sup>1</sup>

With his usual liberality, DR. LEE kindly placed at my disposal the use of these documents, expressing a wish

justies, it is declared that upon his Prussian Majesty taking off the attachment put upon the Silesian debt, and causing to be paid to his Britannic Majesty's subjects what remains due to them thereon, according to the original contract, as well interest as principal, H. B. Majesty does promise and engage on his part to cause to be paid to H. P. Majesty the sum of 20,000*l.* sterling, for extinguishing all and every claim from his said Majesty, or his subjects, upon H. B. Majesty under any pretence whatever.

"Done at Westminster, the 16th day of January, in the year of our Lord 1756.

"L. S. HARDWICKE, Cr.

"GRANVILLE, Pr.

"HOLLES NEWCASTLE.

"HOLDERNES.

"H. FOX."

On the part of the Prussian Government M. Michell, on the 15th June, 1756, communicated to the Earl of Holderness that part of the money for the repayment of the loan had been already lodged in the Bank of England, and the remainder of both principal and interest would be paid in a few days.

<sup>1</sup> This was the case of a ship belonging to subjects of Sweden, with a cargo of pitch and tar, the produce of that country, bound to a port of the enemy. The Court of Admiralty, on the ground of contraband, condemned both ship and cargo; a sentence which was affirmed on appeal. Since that decision it has been arranged by treaty between the two countries that such articles shall be only subject to right of pre-emption.—*Neptunus*, 6 Rob. 405.

that by publication they might be rendered more extensively useful.

The Profession is already indebted to a late distinguished Advocate at Doctors' Commons, and Professor of Civil Law in the University of Oxford, for a valuable accession to the knowledge of ecclesiastical and testamentary law by the publication of a collection of cases relating to those branches, selected from other papers of SIR GEORGE LEE.

In the Memoir attached to those cases he has noticed the extraordinary care and diligence exhibited in the notebooks now remaining in the Library at Hartwell.

The papers from which the present selection is made afford many additional proofs of the justness of that observation, and show that the learning, application, and industry of SIR GEORGE in the other branch of his profession were no less extraordinary. Amongst these are also found not unfrequently traces of the independent and liberal spirit of the writer.<sup>1</sup>

Much time has been occupied in a careful classification and arrangement of the papers, which were naturally collected together according to the period, and in the manner, in which they were originally written.

The present selection is composed of those relating to Contraband of War; a subject which, at the time when the papers came into my possession, was becoming one of increasing interest, and must ever remain one of primary importance.

It is my intention to prepare for publication further selections from these papers, embracing most of the sub-

<sup>1</sup> See note at end of Preface.

jects which occupy the attention of the Admiralty Court as a Court of Prize during a time of war.

It may perhaps occasion some surprise that, under the altered circumstances of the times, it should be considered advisable to publish matters which, it is to be hoped, have for some time lost their interest. Independent, however, of the circumstances, that almost all the preparations have been already made, the opportunity of preserving from possible loss the valuable information contained in these papers, and which is not to be met with in any other quarter, appeared of too much importance not to be made use of, particularly as it is a source of much regret to the members of the Profession that so few records of the earlier proceedings of the Court at Doctors' Commons are known to exist.

To H. C. ROTHERY, Esq., the Registrar of the High Court of Admiralty, my best acknowledgments are due for the ready access he has always so kindly afforded to me to all documents and records, deposited under his custody in the Registry of that Court; and no less so to T. D. HARDY, Esq., of the Record Office in the Tower, for the facilities afforded me in examining the earlier books of the Admiralty Court now deposited there.

I have at all times received the most obliging attention from the latter gentleman and those acting under him. I have, however, to regret that the difficulty of devoting sufficient time to such researches, at a distance from the spot where other engagements necessarily detained me during those hours of the day when these offices are accessible, has prevented me availing myself in the manner I could have desired of the advantages placed at my disposal, and must plead my excuse should the result of my inquiries not prove so accurate or extensive as might be wished.

The importance attached to the proceedings of the Court of Admiralty is now daily increasing; everything, therefore, connected with them becomes of interest, particularly those earlier records by means of which its gradual history and progress might be traced.

These considerations prompt me to express a wish that it may not be long ere all the records of that Court may be collected from every quarter into the Registry of the Court itself; as a repository which, from its vicinity to those who are most likely to avail themselves of the opportunity of examining them, may thus afford a reasonable expectation of their being rendered of more extensive utility.

F. T. P.

Doctors' Commons,  
March, 1856.

---

Upon one occasion Sir George appears to have been consulted on a case submitted to him, on the part of the captors of some neutral property brought in as prize, and that more than one attempt was made to obtain from him an opinion more consonant to the wishes of his client than he felt justified by the circumstances of the case in forming. His final reply is in the following terms:—

“I do not know what to say more than I have already said in my two former opinions; upon considering the case a third time, I see no reason to change my sentiment; and where I do not see reason to vary I will not alter my opinion to gratify the inclination of any client whatever. I am still of opinion the

goods in Nos. 44. and 60. ought not to be condemned, and consequently I cannot advise to insist on condemning them, and putting parties to an additional expense in bringing that matter before the Court. As to the affidavits to Nos. 5. and 64., I think they are not full; but as there is, even from these affidavits, a great probability that those goods are neutral property, I am persuaded the Court will not directly condemn them; but will, in justice, allow the claimers further time to give more satisfactory affidavits, which it is very likely they will do, and then the goods will be restored; and therefore, if it was my own case, I would not insist on a fuller proof of these two articles; but I wish, since the owners are not satisfied with my



opinion, that other Counsel were consulted.

"GEO. LEE.

"Oct. 7. 1747."

Upon another occasion, when he had been consulted by one of the bishops, and his Lordship, after having canvassed the matter with another member of the episcopal bench, requested his answer in writing to the objections which the latter had taken to the opinion of Sir George, the independence of the Advocate was asserted in a letter, of which the following is a copy:—

"MY LORD,

"I am sorry I was not at home when your Lordship did me the honour to call at my house. I have perused the papers you were pleased to send me, which I herewith return. I have great deference for the opinion of the Bishop of Salisbury, but see no reason to change my own. My clients are entirely at liberty to follow my opinion or not, as they judge proper. It is not my practice to enter into disputes concerning any opinion I have given, nor have I time to do it.

"I am, my Lord,

"— — —."

Nor ought the following instances of the honourable and liberal spirit in which he followed the practice of his profession to pass unnoticed.

In his note book of fees received during the last year of his practice, there are the following entries:—

"1751. Admiralty, June 3rd. The *Santa Catharina*. Fee for sentence. Collins, Proctor for the East India Company, the claimants, 21*l*."

A subsequent entry is as follows:—

"Dec. 17. I received my nomination as Dean of the Arches."

And immediately afterwards —

Fees returned	-	-	-	6	6
Returned more	-	-	-	4	4
Returned more fees, Dec. 23	8	8	8		

And the last memorandum to the following effect:—

"Feb. 22. 1752. Returned to Mr. Collins a fee received the 3rd June last, for the India Company, in the cause of the *Santa Catharina*, 21*l*."

# CONTENTS.

## LAW OF CONTRABAND.

### *Cases relating to Contraband extracted from Papers of Sir George Lee.*

	Page
Anna Galley - - -	1
Brigitta Catrina - - -	153
De Daagaraad - - -	163
„ Eendraght - - -	123
„ Jonge Tobias - - -	187
„ Jumfro Sarah - - -	100
„ Klein David - - -	170
„ Maria - - -	133
„ Printz Christian - - -	147
„ Providentia - - -	94. 144
„ Tweelinge - - -	105
„ Vergulde Put - - -	149
„ Vlught naa Egypten - - -	125
„ Vrow Anna Maria - - -	119
„ Vrow Alida - - -	156
„ Wilhelmina Catherina - - -	180
Ebenezer - - -	136
Elizabeth Catherina - - -	115
Fortune de la Mer - - -	33
Fredericus 2dus - - -	109
Hewa - - -	62
Juffrow Susannah - - -	67
Le Mars - - -	141
Louisa - - -	61
Louisa - - -	49
Margaretta Elizabeth - - -	160
Mariborough - - -	24
Med Guds Hielpe - - -	191
Nostra Seignora de Pentha - - -	90

	Page
Princessa de Brazils - - -	129
Providence - - -	75
Santa Boa Ventura - - -	137
St. Erick - - -	85
St. Johannes - - -	166
St. Nicholas of Gottenburgh' - - -	57
T'Slots Copenhagen - - -	40
Young Andreas - - -	99

### *Treaties. — Extracts relating to Contraband.*

Miscellaneous Extracts, principally from the Papers of Sir Nathaniel Lloyd.  
 Rules of Admiralty Court, Feb. 22. 1664., May 22. 1672.  
 Positions thereon of Sir Rob. Wiseman.  
 Instructions to Privateers as to Contraband, 1744, 1780.  
 Orders of Commissioners of Prizes.  
 Just Cause of Seizure, note on.  
 Instructions to Privateers, 1693, 1704, 1705.

### *Forms of Proceedings.*

Affidavit on bringing in Ship's Papers.  
 „ as to Papers, Seizure in Port.  
 „ „ none found.  
 „ „ bringing in Papers not found on board.

Affidavit as to Seizure in Enemy's Port — no Papers on board (p. 282.).	Decree of Restitution.
Monition and Returns on Part of Captors.	„ Condemnation.
„ „ (Droits of Admiralty).	<i>Appeal.</i>
„ „ on Part of Claimant.	Instrument of Appeal.
Claim and Affidavit for Part of Cargo.	Petition of Appeal.
„ „ for Ship by Master and Owner.	Inhibition and Citation.
„ „ by Owner.	Libel of Appeal.
„ „ for Ship and Cargo by Agent.	Desertion of Appeal, Exemption of.
Commission of Survey.	Decree reversing Sentence.
Return of commissioners.	„ affirming Sentence and remitting Cause.
Affidavit — nature of Cargo.	Bill of sale by Marshal.
„ perishable Condition.	INDEX.

## CASES CITED.

---

Anna Catherina, 89, 204.  
 Apollo, xxvi. (4 Rob. 163.), 40, 41. 49.  
 Araminta (Stew. 47.), 82.  
 Arms of Copenhagen, 45.  
 Arms of Plymouth, 193. 198. 204.

Bergstadt, 195.  
 Boucher v. Lawson, 82.  
 Brutus, xxii.  
 Buntzen Cra, 140.

Caroline, iv.  
 Castle Royal of Altona, 118.  
 Catherine, 16.  
 Chandois, 83.  
 Charles, 55. 59. 71.  
 Charlotte (5 Rob. 311.), 38. 40. 49.  
 Charlotte.  
 Christianberg (6 Rob. 381.), 152.  
 Christina Margaretha, 146. 192. 202.  
 Christina Maria (4 Rob. 166.).  
 City of Warsaw, 118.  
 Concordia, 146. 196.

Daageraad, 169, 170.  
 De Hoop (Stew. 566.), 59.  
 De Penha de Franca, 132.  
 De Twee Travens, 149.

Enrom, xlv.  
 Einigheden (1 Rob. 324.), 59. 67.  
 Elizabeth, 107. 146.  
 Endraght, 107. 159. 162. 189. 190.  
 Euphemia Endraght (1 Rob. 22.), 40.  
   (Stew.)  
 Evert, xxvii. (4. Rob. 355.), 41. 49.

Floreat Commertium.  
 Fortune, 118. 203.

Fortune de la Mer, 40. 70. 73. 155.  
 Franklin (3 Rob. 219.), 49. 104.  
 Frau Margareta (6 Rob. 92.), 93.  
 Fredericus Secundus, 107, 121.

Gebroeders, 112.  
 Gute Gesellschaft.

Haabet, xxviii. (2 Rob. 182.), 93.  
 Henrica Jacob, 5.  
 Hewa, 60. 73.  
 Humility.

Imina, xvii. (3 Rob. 168.), 40. 82. 152.  
 Immanuel, xx.

Jacob, 146. 179. 185.  
 Jonge Margaretha (1 Rob. 193.), 49. 74.  
   93. 104. 163. 166.  
 Jonge Tobias, xxi. 143, 144.  
 Juffrow Anna, 37. 203.  
 Juffrow Magdalena, 163.  
 Juffrow Wobetha.  
 Juno (2 Rob. 122.), 161.

La Vierge Marie, 38. 43. 45.  
 Leucade (Eccl. & Adm. Rep. 228.), 179.  
 Lisette (6 Rob. 390. n.), 82.  
 Louisa, 111.  
 Lucy, xxviii.

Magnus (1 Rob. 31.), 74.  
 Margaretha Elizabeth, 175.  
 Margaretha Magdalena, xxiii.  
 Maria (1 Rob. 373.), 48. 60. 191.  
 Marie, 47. 59.  
 Maria Elizabeth, 175.  
 Marlborough, 5.  
 Med Gud's Hielpe, 60. 65.

Mercurius (1 Rob. 86.), 74.  
Minerva, xxviii.  
Mors v. Slue (1 Ventr. 190.), 84.

Neptunus (6 Rob. 407.), 49. 60.  
Neutralitet (3 Rob. 297.), 49. 104.  
North Star, 47. 60. 71, 72.  
Nostra Signora de Begona.  
Nostra Signore de Pentha, 112.

Orozembo, lviii.  
Oster Risoer, xlv.  
Ostsee (2 Eccl. & Adm. Rep. 170.), 179.

Postilion of Bordeaux, 38, 39. 73.  
Providentia, 179.  
Pyed Crow, 140.

Ranger (6 Rob. 125.), 93. 104.  
Richmond xxi. (5 Rob. 328.), 60. 93.  
Ringende Jacob (1 Rob. 90.), 49.

St. Anna, 194.  
St. Anthony, 9, 10.  
St. Antonia, 55.  
St. Jacob, 203.  
St. Peter of Stockholm, 196.  
Santa Boa Ventura, 190.

Santa Rosa, 152.  
Sarah Christina (1 Rob. 238.), 49.  
Sladen, 194.  
Sowton's Case, 65.  
Staatd Embden (1 Rob. 26.), 49. 60. 74.  
191.  
Success (Stew. 79.), 82.

Town of Rotterdam, 196.  
T'Slots Copenhagen, 73.  
Twee Juffrouwen (4 Rob. 243.), 49. 60.  
Twende Brodre, 40. 48, 49, 50. 54. 67. 137.  
Trendre Sostre, xix.

Unity, 45.  
United States (Stew. 117.), 82.

Vierge Marie, 46, 47, 48. 70. 73.  
Vine Grape, 71.  
Vlught na Egypten, 132.  
Vrow Anna Maria, 117, 118.

Warsaw Arms, 204.

Young Johannea, 92. 112.

Zelden Rust, xvii. (6 Rob. 94.), 32. 93.

Bynkershoek, 45, 46. 193. 201.  
Gronovius, 202.  
Grotius, 201.  
Heineccius, 176.  
Jenkins, Sir L., 65. 114. 195.

Loccenius, 45. 65.  
Memoire Justificatif, 5.  
Robinson, Coll. Marit., 32. 197.  
Zouch, 38. 45. 65.

## ON THE SUBJECT OF CONTRABAND

THE FOLLOWING ARE THE PRINCIPAL AUTHORITIES  
TO BE CONSULTED.

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GROTIUS, De Jur. Belli ac Pacis.

PUFFENDORFF, De Jure Nat. et Gentium.

BYNKERSHOEK, Questiones Juris Publici.

WHEATON on International Law.

„ on Capture.

KENT's Commentaries.

DEANE on War.

WILDMAN's International Law.

DE PISTAYE ET DUVERDY, Traité des Prises maritimes.

HAUTEFEUILLE, Des Droits et des Devoirs des Nations neutres.

LAMPREDI, Del Commercio dei Popoli neutrali.

GALIANI, Doveri dei Principi neutrali.





## CONTRABAND.

---

No principle of international law is more firmly established than the duty of neutrals to abstain from all interposition in the war between two belligerents. This duty, which excludes all active personal interference, extends also to the prohibition of material assistance.

Upon this principle is founded the law of contraband of war.

Dr. Richardson, in his valuable Dictionary of the English Language, defines *contraband* in the following terms:—

“Contraband. It. *contrabando*. Fr. *contrebande*, Definition. Contre le défense, le ban — against *ban* — Merchandize de *contrebande*. Merchandize that is forbidden (by proclamation, &c.). Cotgrave.”

According to this definition the term would appear to have been originally rather applied to offences against the municipal laws of some particular state, of the description now styled smuggling, in which sense the French term *contrebande* is still used; the distinctions between articles prohibited to be exported or imported<sup>1</sup> in time of peace, and those forbidden to be conveyed to an enemy during war, being preserved in that language by the use of the terms *contrebande* and *contrebande de guerre*.

<sup>1</sup> “The term *contraband* is not confined to implements of war imported, but applied also sometimes in its original and more general sense (*verbotene und contrebande waren*) to such goods as the belli-

gerents choose to prohibit from being exported from the country of his adversary.”—Rob. Coll. Marit. p. 183.

See also 2 Hagg. Adm. Rep. 394. *Prince Frederick*.

The term was then probably applied in its present sense to merchandise forbidden to be supplied to the enemy by the rules or precepts of international law generally; and thus such articles as are not allowed to be conveyed to an enemy during the prevalence of war are styled *contraband*, or more fully *contraband of war*.

Active.

Passive.

CONTRABAND is divided by some writers into *active* and *passive*. The former term being applied to traffic in which the articles are conveyed to the enemy and delivered in his country; the latter to traffic conducted on the part of the neutrals within their own territories, the conveyance of the goods to their destination being left to the enemy himself.

The illegality of the former transaction, at least where the articles in question are of direct immediate use in war, is universally admitted; that of the latter is denied by most publicists.<sup>1</sup>

The difficulty of enforcing any penalty in this latter case, and its exemption from the jurisdiction of a Prize Court, render unnecessary all further allusion to it in such a work as the present.

CONTRABAND being thus defined "merchandise forbidden by the law of nations to be supplied to an enemy," the next question will be, the nature and extent of the prohibition imposed by this law, and from what source a knowledge of it can be derived.

No positive precept of the law of nations being in ex-

<sup>1</sup> Lampredi Theorem. Jur. Publ. univ. pt. 3. c. 12. § 9. n. 4. "Et quia neutrius partis esse debet, et a bello omnino abstinere, neutri etiam suppeditabit quæ directe ad bellum referentur. *Suppeditare* hic loci *transvehere* ad alterutrum hostem significat."

Vide also Lampredi Commercio dei Popoli neutrali, 95. Azuni, pt. 2. c. 2. art. 4. § 26. Galliani maintains the contrary opinion, that such commerce is illegal. Massé, Le Droit Com. 1 tom. pp. 203, 4.

istence, the prohibitions of that law can only be derived from the secondary source, that of conventional law, as collected from custom and usage.

Little satisfaction will, however, be derived from that source, as customs and usages are found to differ amongst various nations; and even in the same nation vary in many material circumstances according to the various changes of time and place.

Much difference of opinion also exists amongst the most distinguished jurists and writers on international law on this subject; and the natural inference would appear to be that it is not one that admits of such precision as to *allow* of fixing an accurate list of articles, that can be considered as at all times contraband. Reference must be made to the principle upon which the prohibition is founded, viz. that of non-interposition in the war between two belligerents, and the circumstances of each case must determine whether such interposition does exist or not.

THE OBJECT of the laws against contraband being to Destination. prevent the communication of assistance to an enemy, it is absolutely necessary to constitute that offence, that the destination of the goods should be to a hostile port.

Goods going to a neutral port cannot fall under that denomination, the conveyance of any goods to such a destination being lawful.<sup>1</sup> Where, however, two ports of Ports in same bay. different character are situated in the same bay, not separated by a headland, they are considered as identified, and a destination to the neutral one will not protect from condemnation.<sup>2</sup>

If the original destination be to a hostile port, but that Destination change.

<sup>1</sup> *Imina*, 3 Rob. 168.

<sup>2</sup> 3 *Zelder Rust*, 6 Rob. 94.

destination have been changed before capture, the vessel and cargo become exempt from the charge of contraband.

Thus, in the case of the *Imina*<sup>1</sup>, the vessel had sailed with an original destination to Amsterdam, with a cargo of ship-timber, but having on the voyage learnt that that place was under blockade, the master formed the design of changing his course to Embden, and altered it accordingly.

The Court observed: "I must ask, then, was this property taken *in delicto*, in the prosecution of an intention of landing it at a hostile port? Clearly not;" and held that "although from the moment of quitting port on a hostile destination the offence is complete, and that it is not necessary to wait till the goods are actually endeavouring to enter the enemy's port, yet the variation of the destination having happened, the parties were, after that time, entitled to the benefit of it," and decreed restitution. This exemption is also extended to cases, where the orders respecting the destination are discretionary, and there is evidence before the Court that, acting upon that discretion, it was not the intention of the master to go to such a port as would entail the penalty of contraband.<sup>2</sup>

Destination  
discretionary.

Thus, in the case of the *Twende Brodre*, the nature of the cargo was such that, if going to *Brest*, a port of military equipment, it would have been contraband; but if to such a port as *St. Maloe's*, not so. The master's instructions referred to both *St. Maloe* and *Brest* as destinations; but the Court held that the words used in them, "if you resolve," indicated an ultimate discretion to have been reposed in the master; and as he had deposed that he was going to *St. Maloe* with a decided intention of making it the ultimate port of destination, and discharging

<sup>1</sup> 3 Rob. 168.

<sup>2</sup> 4 Rob. 33.

his lading there, that this conditional discretion, which was given him to go to *Brest*, would not have been carried into effect, and decreed restitution.

In the same manner, if, during the voyage and before seizure, the port of destination has ceased to be hostile, all question of contraband also ceases. Destination,  
change in  
character.

This was the case of the *Trendre Sostre*.<sup>1</sup> The vessel had arrived at the *Cape*, and was there seized as prize; but that settlement had, in the intermediate time, between the commencement of the voyage and previous to the arrival of the vessel there, surrendered to the British forces.

The Court held that there must be a *delictum* existing at the moment of seizure to sustain the penalty; and was of opinion that as long before that time these goods had lost their noxious character of going as contraband to an enemy's port, that circumstance was a discharge and complete acquittal.

But it will not be allowed that a vessel having, on board a mixed cargo of contraband and innocent articles, should sail on several destinations, some hostile, others neutral, under the pretence that at such destinations as might be hostile the innocent articles only are intended to be landed and delivered, the contraband articles being destined for an ulterior neutral port. Destinations  
several.

Thus, in the former case of the *Trendre Sostre*<sup>2</sup>, the vessel had touched at the *Cape*, a hostile settlement previous to its surrender, but with an ulterior destination to *Tranquebar*.

The Court observed, if the *Cape* had continued Dutch, a person could not have been at liberty to carry thither articles of a contraband nature under an intention of selling

<sup>1</sup> 6 Rob. 391. n.

<sup>2</sup> 6 Rob. 390.



other innocent commodities only, and of proceeding with the contraband articles to a port of ulterior destination.

Contraband,  
what.

WITH REFERENCE to a more specific description of such articles as fall under the denomination of contraband, it is to be observed that articles of commerce may be divided into the following classes: —

1. Those whose use is solely applicable to purposes of peace.
2. Those which are of direct use in war.
3. Those which are of promiscuous or doubtful use (*promiscui, ancipitis usus*), as being applicable to purposes of peace or war.
4. Those which have been declared to be contraband by treaty entered into by a neutral and one or both of the belligerent powers.

And, lastly, those which have been declared to be contraband by public notification of one of the belligerents.

Articles ap-  
plicable solely  
to purposes of  
peace.

1. Articles whose use is solely applicable to purposes of peace.

As from their nature no benefit in the prosecution of the war can be derived to the enemy from the purchase of them, and it is the undoubted right of neutrals to carry on their accustomed trade to all places, including also the ports of the enemy, except when under blockade, the conveyance of these articles can entail no penalty; the ships, however, of which they form the cargo, are in common with all other vessels liable to visitation and search.<sup>1</sup>

Articles of  
direct use in  
war.

2. The second class comprises articles which are of direct use in war.

With respect to these no questions can arise. On proof of the use of the articles being solely or particularly ap-

<sup>1</sup> *Immanuel*, 2 Rob. 197.

plicable to hostile purposes, the conveyance of it to the enemy would amount to such a direct interposition in the war, as necessarily to entail the confiscation of the property.

Articles of  
direct use in  
war.

Indeed on this point the law is so well established, that articles of this description are seldom claimed, it being evidently more prudent on the part of the owners to abandon them than incur the expenses of a suit, which could have only one termination, that of condemnation of the property in question, and also of the ship itself, and any other property on board even of an innocent nature, if belonging to the same owner. The abstaining, however, from making the claim will not protect his property, if it appear from the ship's papers that the same party is the owner of the contraband goods and other property on board.<sup>1</sup>

The question has sometimes arisen with respect to ships, *Ships.* which have been sent for sale to an enemy's country, and the construction of which has been such that there could be no doubt of their having been built for purposes of war.

Thus in the case of the *Richmond*.<sup>2</sup>

This was the case of a ship which, the owner had directed to be sold to the enemy, with the declared expectation that it would be employed hostilely against this country, knowing it to be peculiarly adapted for purposes of war.

The Court observed, it cannot surely under any point of view but be considered as a very hostile act to be carrying a supply of a most powerful instrument of mischief, of contraband, ready made up, to the enemy for hostile use, and intended for that use by the seller, and with an avowed

<sup>1</sup> *Jonge Tobias*, 1 Rob. 329.

<sup>2</sup> 5 Rob. 325.

Ships.

knowledge that it would be so applied, and condemned the vessel.

The case of the *Brutus*<sup>1</sup> was of a similar description.

This vessel had been surveyed, and it was reported that "her hull, masts, yards, rigging, and sails appeared in every respect as fitted for a ship of war. That she had shot lockers fitted to each port, and netting stanchions for stowing hammocks for quarters, with nettings fixed fore and aft; that she was pierced for fourteen guns, with ports calculated for guns of four pounds, with rings and eye-bolts; and that her sides were regularly built for quarters, agreeably to the established way of building, and with bow and stern chase ports, and a capstern complete for heaving of an anchor instead of a windlass."

The Court, considering that under the circumstances she was built for purposes of war and not for peace, and that it was proved she was going to be sold to the enemy, condemned the vessel as contraband of war. A sentence which was affirmed on appeal.<sup>2</sup>

Where, however, the vessels, as in the case of the *Fanny*, 24th March, 1804, and the *Neptune*, 18th July, 1804<sup>3</sup>, were of more ambiguous construction, had been actually employed in trade, and the occasion for selling them had arisen from circumstances, the claim of the neutral was admitted. This was also done in the case of the *Raven*, Lords, 13th June, 1804<sup>3</sup>, where the vessel, although formerly a privateer, had been bought for purposes of trade, and the owner only intended her for sale on failure of all attempts to render her fit for that service.

It appears, therefore, that the principle of considering

<sup>1</sup> 5 Rob. 331.

<sup>2</sup> 27th July, 1804.

<sup>3</sup> 5 Rob. Ap. 409.

the sale of ships of war to the enemy as contraband is strictly held, but its application has been restricted to cases, in which no doubt existed as to the character of the vessel or the purpose for which it was intended to be sold.<sup>1</sup>

Warlike  
articles.

Ships.

BUT EVEN IN THE CASE of articles of direct use in war, an exception is always made in favour of such a quantity of them, as may be supposed to be necessary for the use or defence of the ship, and which would pass under the denomination of ship's stores.

Ship's stores.

In the case of the *Richmond*<sup>2</sup> before alluded to, the vessel was seized in port at *St. Helena*, preparing for her departure, and actually unmoored for the purpose of proceeding to the *Isle of France*, under a false destination, with articles of a contraband nature concealed on board. Her cargo consisted in part of twenty-nine barrels of pitch and tar, twelve barrels of the same articles having been previously sold at *St. Helena*.

The Court held that, although the term "stores" was to be liberally interpreted, it still must be so understood as to be capable of a definite construction, and that it was quite impossible to suppose, that the whole quantity was originally intended as stores, and condemned the articles.

In the case of the *Margaretha Magdalena*<sup>3</sup>, it had been stated by the master, in explanation of the quantity of stores in excess on board his vessel, that part of them were destined for another ship, which it was intended to purchase at *Batavia*; but this excuse was rejected by the Court, who observed that it could by no means be allowed, that neutrals should be at liberty to

<sup>1</sup> 5 Rob. Ap. 410.

<sup>2</sup> 5 Rob. 335.

<sup>3</sup> 2 Rob. 140.

Ship's stores. carry out a larger quantity of articles of this nature than are wanting for their own ship's use, under a speculation of purchasing other ships, and that the speculation should afterwards be abandoned, and the contraband articles sold as stores to the enemy. If the speculation was originally and *bonâ fide* entertained, on failure of it the surplus should either be brought back again or sold in some neutral port, for neutrals can have no right to carry out double stores of such description for a contingent purpose, and then dispose of them to the enemy at pleasure.

Articles of  
promiscuous  
use.

THE ONLY ARTICLES that can occasion any real difficulty are those included under the third class, viz., articles of a promiscuous use (*promiscui, ancipitis usus*), such as are equally applicable to purposes of peace or war.

Of these the best examples may perhaps be selected from those of metals, particularly *iron* and *copper*; than which there are no articles in nature that come more exactly under the description of promiscuous use, and which are capable of being applied to the most innocent as well as most noxious purposes, and which have accordingly been held to be exposed, or not, to the penalty of confiscation as contraband, according to the circumstances under which they were placed.

The prohibition with reference to contraband articles, depending upon the obligation imposed upon neutrals to render no assistance to either of the belligerent parties in the prosecution of the war, whatever may be the nature of the articles, if there be a moral certainty, or strong legal presumption, that they are intended to be applied to hostile purposes, the Court will consider them as falling under the list of prohibited articles.

Their application to military purposes being the test, much will consequently depend upon the nature and

condition of the articles, as well as their probable destination. Articles of promiscuous use.

With reference to the nature of the articles : —

The catalogue of this description of contraband has varied much, and must vary from time to time, with the changes and revolutions of nations in their territories, their manners, and pursuits, and, above all, in the science of war. Nature. When from these changes an article, which before was innocent, becomes of great use in war, it is immediately clothed with the character of contraband.

The rule laid down by Grotius, which is founded in justice and good sense, has been looked up to as the safe guide of decision, — *distinguendus est belli status*.<sup>1</sup> The situation and means of the belligerent countries, the cause of any given war, the object of attack and defence, will clearly point out the hostile wants of each party and the articles, by which he may be assisted in opposing his enemy or defending himself. Whatever becomes of military use to an enemy becomes immediately contraband. The invention of gunpowder added a vast accumulation to the catalogue. In more modern times, when wars have assumed a naval character, articles decidedly of use in military naval equipment, after some opposition from interested neutrals, are universally admitted to be contraband.<sup>2</sup>

With respect to the condition in which the articles are found, much indulgence is, by the practice of nations, shown, where the articles are in their native and unmanufactured state.<sup>3</sup> Thus iron is treated with indulgence, though anchors and other instruments fabricated out of it are directly contraband. Condition, native, unmanufactured. The quantity of an article found

<sup>1</sup> Vide Grotius, lib. 3. c. 1. § 3.

<sup>2</sup> *Jonge Margaretha*, 1 Rob 195.

<sup>3</sup> *Euphémie*, Stew. 565.

Articles of  
promiscuous  
use.

Quantity.

Growth and  
produce. <sup>1</sup>

on board is a subject considered entitled to much consideration; a moderate quantity of an article, however noxious with reference to contraband, as, for instance, gunpowder itself, would be considered as forming part of the ship's stores and intended for its own use, and as such free from condemnation, which would justly be applied to any very large quantity of the same article, the supply of which could only be reasonably accounted for as intended for purposes of commerce.

An exception is also made in favour of articles, which are the growth and produce of the neutral country.

This exception is not, however, founded upon any general principle of international law, as cases are not wanting where such articles have been condemned as contraband; this was done in the celebrated case of the *Med Gud's Hjelpe*, reported below, p. 191. The cargo here consisted of pitch and tar, the produce of Sweden, and laden on board a Swedish vessel, but which was notwithstanding condemned as contraband; a sentence which was affirmed on appeal.

This exception in favour of articles of the growth and produce of the neutral country is rather a relaxation introduced into the practice of the Court, from the consideration that it would be a harsh exercise of a belligerent right to prohibit the carriage of articles, which might constitute a considerable part of its native produce and ordinary commerce, as would be the case with Sweden with reference to the articles referred to in the case above cited.

This exception is also sometimes extended to the produce of the neighbouring district.

Thus, in the case of the *Juffrow Wobetha*<sup>1</sup>, a cargo of timber from Dantzic was condemned, it having been proved

<sup>1</sup> *Apollo*, 4 Rob. 164.

to be the produce not of the territory of Dantzic, but of the neighbouring kingdom of Poland; but this sentence was reversed on appeal, and the cargo decreed to be restored, the Court conceiving that Dantzic, though a free city, being at that time within the immediate protection of Poland, was entitled to export such a commodity as one of its own products.

Articles of promiscuous use.

Growth and produce of neighbourhood.

And in the case of the *Evert*<sup>1</sup>, the same extension of the privilege was recognised in favour of the Hanse Towns.

But in order to avail themselves of this latter exception, it is incumbent on the claimants<sup>2</sup> to show that the article was of the growth of the neighbouring district, whose produce they were usually employed in exporting in the ordinary course of their trade.

THESE EXCEPTIONS in favour of articles of the growth and produce of the neutral or neighbouring country are also to be understood as subject to the condition that the articles in question may be brought in for pre-emption, which is rather to be considered as a privilege conferred by the belligerent on, than a right to be claimed by, the neutral, and consists in the purchase of the article in question by the government to which the captor belongs after it has been brought in for adjudication, allowance being made for the original price, with a fair, reasonable profit.

Pre-emption.

This subject was fully discussed in the case of the *Haabet*<sup>3</sup>, the cargo of which consisted of corn going from *Altona* to *Cadiz*, which had been seized and brought in and bought by Government.

The Court observed that the right of pre-emption was no peculiar claim of this country, but belonged generally

<sup>1</sup> 4 Rob. 355.

<sup>2</sup> 4 Rob. 182.



Articles of  
promiscuous  
use.

Pre-emption.

to belligerent nations. The ancient practice was to confiscate such a cargo as the one before the Court entirely; a more mitigated practice prevailed in later times of holding such cargoes subject only to a right of *pre-emption*, that is, to a right of purchase upon a reasonable compensation to the individual. It had never been understood that, on the side of the belligerent, this claim went beyond the case of cargoes avowedly bound to the enemy's ports, or suspected on just grounds to have a concealed destination of that kind; or that, on the side of the neutral, the same exact compensation was to be expected which might have been demanded from the enemy in his own port. The enemy might be distressed by famine, and might be driven by his necessities to pay a famine price for his commodities if it got there; it does not follow that, acting upon the rights of war in intercepting such supplies, the government is under the obligation of paying that price of distress. It is a mitigated exercise of war on which the purchase is made, and no rule has been established that such a purchase should be regulated exactly upon the same terms of profit which would have followed the adventure if no such exercise of war had intervened; it is a reasonable indemnification and a fair profit on the commodity that is due, reference being had to the original price actually paid by the exporter and the expenses which he has incurred.

The usual practice appears to have been for Government to pay the ordinary expenses of captor and claimant<sup>1</sup>; and in determining the remuneration to be paid to the latter for the articles seized, to allow the invoice price and ten per cent. profit<sup>2</sup>, together with the freight.<sup>3</sup>

<sup>1</sup> *Twende Brodre*, 4. Rob. 38.  
*Christina Maria* 4 Rob. 166.

<sup>2</sup> *Lucy*, 3 Rob. 210.; see also  
*Minerva*, 2 Rob. 20.

<sup>3</sup> *Haabet*, 2 Rob. 175.

Another important consideration in determining the character of the goods which fall under this class is, that of their destination; for it being impossible to ascertain the final use of an article *ancipitis usus*, it is not an injurious rule which deduces both ways the final use from the immediate destination.<sup>1</sup>

Articles of  
promiscuous  
use.  
Destination.

Of this the best criterion will perhaps be the nature of the port to which they are bound.

The question to be determined being whether the articles were intended for the ordinary use of life, or even for mercantile ship's use, or whether they were going with a highly probable destination to military use, the nature and quality of the port to which the articles were going is not an irrational test of the matter of fact on which the distinction is to be applied.

If the port is a general commercial port, it shall be understood that the articles were going for civil use, although occasionally a frigate or other ship of war may be constructed in that port. *Contrà*, if the great predominant character of a port be that of a port of naval military equipment, it shall be intended that the articles were going for military use, although it is possible that the articles may be applied to civil consumption.

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The general principles applicable to this class of goods having been thus laid down, the following list of these, respecting which decisions have been given in the Admiralty Prize Court, will serve to illustrate its practice. In order to avoid needless repetition they will, as far as

<sup>1</sup> *Jonge Margaretha*, 1 Rob. 195.

Contraband possible, be classed under such leading divisions as Pro-  
 List of articles. visions, Stores, &c. An alphabetical reference will be  
 found in the Index.

## PROVISIONS.

Vide p. lxviii. and NAVAL STORES.

Much difference of opinion appears to have existed respecting the character of provisions—*Commeatus*.<sup>1</sup>

*Wolfius*, *Vattel*, and other writers on the Continent have been inclined to view them in a favourable light, although *Vattel* admits that, under certain circumstances, as if, for example, there be an expectation of reducing an enemy by famine, they may justly be considered as contraband, and subject to condemnation.

The English Court of Admiralty appears to have been formerly less lenient in its consideration.

In the case of the *Nostra Signora de Pentha*, September 4. 1746<sup>2</sup>, the Court observed, that provisions are, and always have been, esteemed contraband. And that such was the case with respect to corn, wine, and oil, was stated in 1673<sup>3</sup>, in an opinion of the then King's Advocate, Sir Robert Wiseman; and in later decisions the same character was applied to many other sorts of provisions.

The modern established rule appears to be that generally they are not in themselves contraband, but may become so under circumstances arising out of the particular state of the war, or the condition of the parties engaged in it.<sup>4</sup>

They are free from all taint of contraband if they are of the growth of the country which exports them;

<sup>1</sup> P. 119.

<sup>2</sup> P. 93; see also p. 190.

<sup>3</sup> *Jonge Margaretha*, 1 Rob. 193.

<sup>4</sup> *Ibid.*; *Haabet*, 2 Rob. 182.

but then fall under the liability of being purchased at a certain price by the government of which the captors are subjects (*vide* Pre-emption, *antè* p. xxix.). List of Articles.

They are also entitled to indulgence if they are in their native and unmanufactured state; thus wheat, with reference to contraband, is not considered as so noxious a commodity as any of the final preparations of it for human use.<sup>1</sup>

But the most important distinction depends upon the use for which the articles were intended, and which is principally determined by the character of the port of destination, whether a port of naval military equipment or one of a commercial nature. Thus, in the case of the *Jonge Margaretha*, before cited, the destination was to Brest, where at that time there was notoriously preparing against this country a considerable armament, to which a supply of the articles, viz., cheeses, forming the cargo of the neutral vessel, would be eminently useful. The Court condemned them as contraband.

Under this division the following articles naturally fall: —

#### BEER.

In the case of the *Juffrow Magdalena*, March 3. 1747<sup>2</sup>, beer was restored with this dictum, that it was an article of luxury, and not merely ship's provisions. And in a subsequent case, that of the *Endraght*, October 5. 1747<sup>3</sup>, forty hogsheads of beer on board a Prussian vessel bound to Bordeaux were also restored, but partly on account of the smallness of the quantity. In that of the *Margaretha Elizabeth*, July 7. 1748<sup>4</sup>, a

<sup>1</sup> *Jonge Margaretha*, 1 Rob. 193.;  
*Haabet*, 2 Rob. 182.

<sup>2</sup> Pp. 123. 163.

<sup>4</sup> Pp. 160. 163.

<sup>3</sup> Cited in the *Jonge Margaretha*, 1 Rob. 190.

## List of Articles.

Danish vessel bound to Rochelle, a large quantity, of 200 hogsheads, was condemned, the Court declaring it to be in its nature a species of provisions, and therefore contraband.

## BISCUIT.

There can be no doubt that, from its nature, any large quantity of the article found on board a vessel bound to a hostile port of naval military equipment, would be held to be contraband.

The question came before the Court in the case of the *Ranger*<sup>1</sup>, which was one of peculiarly aggravated circumstances, the vessel was going to Cadiz under false papers. The cargo consisted in part of sea-biscuits: a fraudulent advantage had been taken of the permission granted by the British government to import cargoes of provisions to relieve the distresses of the Spaniards, at that time suffering from famine. Both cargo and ship were condemned.

## BRANDY.

This article may be considered in connection with that of wine, they generally being found united as part of the same cargo.

In the consideration of them, the question appears to be whether they are to be considered as articles of luxury, or as human food.

From the opinion of Sir Robert Wiseman given in 1673, and before alluded as cited in the *Jonge Margaretha*, it appears to have been the practice of the

<sup>1</sup> 6 Rob. 126.

Admiralty Court at that time to consider wine liable to condemnation as contraband. List of Articles.

In the case of the *Elizabeth Catherina*<sup>1</sup>, June 20. 1747, a Swedish vessel, bound to Havre de Grace, but with false papers, the Court considered that wine and brandy fell under the general denomination of provisions, and as such condemned them as contraband.

In a subsequent case, however, that of the *De Klein David*<sup>2</sup>, 1748, a Prussian vessel, bound to Dunkirk, the Court directed the same articles to be restored.

But in that of the *Edward*<sup>3</sup>, where the evidence strongly tended to show that the real destination was Brest, the Court declared that, though wines were not an article generally contraband *per se*, yet, in conjunction with all the circumstances of the voyage, they were unquestionably to be considered as naval stores, and liable to condemnation.

#### BUTTER.

In the case of the *Young Andreas*<sup>4</sup> the cargo consisted in part of twenty-two tons of butter, which was condemned as contraband.

#### CHEESE.

In the earlier cases cheese appears not to have been considered contraband, but rather as an article of luxury; probably, however, in these cases the destination was not to a port of naval military equipment, or the articles not of the kind fit for naval use.<sup>5</sup>

In the case of the *Juffrow Magdalena*<sup>6</sup>, March 3.

<sup>1</sup> P. 115.

<sup>2</sup> P. 176.

<sup>3</sup> 4 Rob. 70.

<sup>4</sup> P. 99.

<sup>5</sup> *Jonge Margaretha*, 1 Rob. 190, 191.

<sup>6</sup> Cited in 1 Rob. 190.

## List of Articles.

1747, a Prussian ship, from Amsterdam to Bourdeaux, cheese was restored as an article of luxury.

In that of the *De Endraght*<sup>1</sup>, October 5. 1747, to the same destination, the cargo of cheese was also restored.

And in that of the *Welvaarl*<sup>2</sup>, August 7. 1799, Dutch cheeses going to Bourdeaux were restored.

But in more modern times they have been held liable to confiscation. Thus, in the case of the *Jonge Margaretha*<sup>3</sup>, the destination was to Brest, a port universally known to be one of naval military equipment, and authentic certificates were exhibited to the effect, that the articles before the Court were such cheeses as were used in British ships, when foreign cheeses were used at all, and such as were exclusively used in French ships of war; under these circumstances they were condemned as contraband.

In the still later case of the *Zelden Rust*<sup>4</sup>, the cargo consisted of Dutch cheeses; the vessel was on a voyage from Amsterdam to Corunna; certificates were produced to prove them to be fit for naval stores and such as were usually used on board French and Spanish ships of war. On this ground, and also on account of the destination being itself a port of naval equipment and in the same bay with Ferrol, a still more important port of that description, the cargo was condemned as contraband.

## Cod.

Salted cod going to Rochelle condemned as contraband. *Jonge Frederick*<sup>5</sup>, 1747.

<sup>1</sup> P. 123.

<sup>2</sup> 1 Rob. 195.

<sup>3</sup> 1 Rob. 190.

<sup>4</sup> 1 Rob. 94.

<sup>5</sup> Cited in 1 Rob. 193.

## CORN, WHEAT.

List of Articles.

Flour, meal, v. p. lxvii.

In the year 1673, according to the opinion of the Advocate-General already cited<sup>1</sup>, it was the practice of the Admiralty Court to condemn *corn* as contraband.

In the case of the *De Junfro Sarah*<sup>2</sup> there appeared strong presumption that, with an ostensible destination to Lisbon, her real destination was Bourdeaux; her cargo, a great part of which was *wheat*, was condemned.

In that of the *De Vrow Anna Maria*<sup>3</sup> the Court pronounced *wheat* to be certainly provisions, and condemned it as contraband under the Swedish treaty.

The case of the *Goede Vreede*<sup>4</sup>, March 6, 1780, appears to have been of a similar description.

In more modern times a more favourable consideration has been applied to these articles. Thus, in the case of the *Jonge Margaretha*<sup>5</sup> before cited, the Court observed that *wheat* is not considered as so noxious a commodity as any of the final preparations of it for human use.

They are, however, considered subject to the right of pre-emption on the usual terms. Thus, in the case of the *Haabet*<sup>6</sup>, a cargo of *wheat*, going from Altona to Cadiz, was seized, and brought in, and bought by government; the invoice price and 10 per cent. profit was allowed for it. The claim for insurance, which had not been paid, but which it was contended ought according to the custom of the trade to be allowed, was rejected.

<sup>1</sup> 1 Rob. 192.<sup>2</sup> P. 100.<sup>3</sup> P. 122<sup>4</sup> *Apollo*, 4 Rob. 163.<sup>5</sup> 1 Rob. 190.<sup>6</sup> 2 Rob. 182.



List of Articles.

The *Minerva* was a similar case of a Danish ship laden with corn captured on a voyage from Amsterdam to Leghorn; the cargo was taken by the Government on the usual terms; but claimant's expenses were not allowed on account of the defect of proof in the first instance.

#### OIL.

Liabie to be condemned as contraband according to the practice of the Court of Admiralty in 1673.<sup>1</sup>

#### RICE.

This article was in the case of the *St. Johannes*<sup>2</sup>, Oct. 20. 1740, considered as falling under the denomination of provisions, and, as such, condemned as contraband.

#### SALMON.

Condemned as contraband in the case of the *Nostra Signora de Penth*.<sup>3</sup>

#### SALT.

In the case of the *Jonge Tobias*<sup>4</sup>, a Swedish ship, the cargo, consisting entirely of salt, bound to Dunkirk, was held to be provisions, and as such condemned.

A similar decision was afterwards pronounced in the case of the *Le Mars*.<sup>5</sup>

#### SALTED PROVISIONS.

These, from their character of naval stores, would be peculiarly liable to condemnation.

<sup>1</sup> *Jonge Margaretha*, 1 Rob. 193.

<sup>2</sup> P. 170. *Jonge Margaretha*, 1 Rob. 194.

<sup>3</sup> P. 90.

<sup>4</sup> P. 187.

<sup>5</sup> P. 144.

*Salted Beef* was condemned as contraband in the case *List of Articles* of the *Vriendschapp*<sup>1</sup>, July 5. 1798;

*Salted Cod* in that of the *Jonge Frederick*<sup>2</sup>, in 1747;  
and

*Salted Herrings* in that of the *Johannes*<sup>3</sup>, in 1748.

But small quantities of such articles would be rather considered as ship's provisions, and not as forming part of the cargo.<sup>4</sup>

## WINE.

Vide BRANDY.

## STORES.

This term is found in the reports of the cases applied to articles for the ship's use and to naval and warlike stores.

### STORES FOR SHIP'S USE.

With reference to these the term "Stores" is liberally interpreted, but it is expected that the supply on board should not, to an unreasonable extent, exceed what each vessel might be expected to require for its own use.

In the case of the *Margaretha Magdalena*<sup>5</sup>, before alluded to p. xxiii., it appeared that extra stores had been carried out, on pretence of their being intended for the use of vessels proposed to be purchased abroad, and had only been sold to the enemy on failure of the speculation. The Court, under the circumstances, decreed restitution, but expressed a strong opinion against the practice, and observed that in such a case

<sup>1</sup> Cited in the *Jonge Margaretha*,  
1 Rob. 189.

<sup>2</sup> Ibid. p. 193.

<sup>3</sup> Ibid.

<sup>4</sup> P. 170.

<sup>5</sup> 2 Rob. 140

## List of Articles.

the stores, on failure of the original plan, should have been brought back again, or sold in some neutral port. In that of the *Richmond* there were found on board twenty-nine barrels of tar; and it appeared that twelve barrels of the same article had been previously sold on the voyage at St. Helena. The Court held that it was quite impossible to suppose that the whole quantity was originally intended as stores, and condemned them as contraband.

## WARLIKE STORES.

These are, from their very nature, evidently contraband; but every vessel is, of course, allowed to carry such a quantity as may be necessary for purposes of defence: this provision is expressly introduced in many treaties.<sup>1</sup>

## SALTPETRE.

In the case of the *De Wilhelmina Catharina*<sup>2</sup>, bound from Amsterdam to Bayonne, fourteen pounds of saltpetre were, with other articles, condemned as contraband.

## SHOT.

This article, in its own nature, is evidently contraband; in the case of the *Marlborough*<sup>3</sup>, it was condemned as forming part of other warlike stores. In that of the *De Wilhelmina Catharina*<sup>2</sup>, shot in any large quantity was declared to be contraband, the Court at the same time expressing its opinion that in the case of a small quantity, as a single barrel, it would not be held liable

<sup>1</sup> P. 239.<sup>2</sup> P. 180.<sup>3</sup> Pp. 25. 32.

to condemnation; but pronounced such a quantity as that involved in the case before it, viz., four tons and upwards, to fall under that description, and condemned it as such. List of Articles.

## NAVAL STORES.

These comprehend all articles made use of in navigation, as timber and iron for shipping, pitch, tar, hemp, cordage, provisions<sup>1</sup>, &c. Their character with respect to contraband is, in cases of doubt, ascertained by reference<sup>2</sup> to the officers of H. M. Dockyards, or other parties such as shipwrights, &c., duly qualified to give an opinion upon the subject. They are not *apta bello per se*<sup>3</sup>, and would be restored or condemned according to their destination.

In the case of the *Staat Embden*<sup>4</sup>, a cargo of this description on a voyage from Riga to Amsterdam, at that time a port of naval equipment under possession of the enemy, was condemned.

They have, however, been in many treaties<sup>5</sup> expressly excepted from the list of contraband articles.

Provisions would, in many cases, fall under this description: they have been treated of already. Other articles follow in order.

## ANCHORS.

In the case of the *Jonge Margaretha*<sup>6</sup> the Court, alluding to the distinction made in favour of articles in their native and unmanufactured state, observed: thus, iron is treated with indulgence, though *anchors* and

<sup>1</sup> *Neptunus*, 6 Rob. 408.

<sup>2</sup> *Ringende Jacob*, 1 Rob. 92.

<sup>3</sup> P. 48.

<sup>4</sup> 1 Rob. p. 31.

<sup>5</sup> P. 39.

<sup>6</sup> 1 Rob. 195.

List of Articles.

other instruments fabricated out of it are directly contraband.

#### CORDAGE.

In the case of the *Jonge Margaretha*<sup>1</sup> the Court observed that cordage, as a manufactured article, was less favourably considered than hemp.

#### HEMP.

When hostilities were less naval than they have now become, hemp was considered of a disputable nature, and was more favourably considered than cordage<sup>2</sup>; but by the modern Law of Nations, when going to the enemy's use, it is liable to be seized as contraband in its own nature.<sup>3</sup>

In the case of the *Fredericus 2dus*, May 20. 1747<sup>4</sup>, hemp was condemned as contraband. It has since been expressly declared to be so in the explanatory article of the treaty of 1670 with Denmark.<sup>5</sup>

But if the hemp be the produce and property of the exporting country, whether on board a vessel of that or another neutral country, it is not held to be contraband; thus, in the case of the *Apollo*<sup>6</sup>, the cargo consisted of hemp, the produce of Russia and property of a Russian merchant, but on board a Prussian ship on a voyage from Liebau in Courland to Amsterdam, and was directed to be restored.

Under this head will also fall the following: —

<sup>1</sup> 1 Rob. 194.

<sup>2</sup> *Maria*, 1 Rob. 372.

<sup>3</sup> *Ibid.*; *Ringende Jacob*, *ibid.* 90, 91.; *Franklin*, 3 Rob. 220.; *Floreat*

*Commercium*, *ib.* 178.; *Evert*, 4 Rob. 455.

<sup>4</sup> Pp. 109. 111.

<sup>5</sup> P. 239.

<sup>6</sup> 4 Rob. 164.

## CORDILLA OR TORSE.

List of Articles.

This is a coarse kind of hemp. In the case of the *Gute Gesellschaft*<sup>1</sup>, the vessel, laden with cordilla hemp, was bound on a voyage from Lubec to Bourdeaux.

On reference to the proper authorities, the cargo was reported to be not fit for naval purposes and released, but captors' expenses were given on account of the necessity of bringing in such cargoes.

## PASS HEMP.

This article was, after the usual references, condemned as contraband in the case of the *Evert*.<sup>2</sup>

METALS.<sup>3</sup>

These are articles subservient to an infinite variety of human uses, as much in the ordinary commerce of peace as in the affairs of war, and come most exactly under the description of promiscuous use<sup>4</sup>: in their native unmanufactured state they are generally treated with indulgence<sup>5</sup>; but even in that state would probably, where evidently intended to promote the hostile purposes of the enemy, be condemned<sup>6</sup>, and, in general, a reference would be directed to ascertain whether the circumstances of the case would not place them under the category of naval stores.<sup>7</sup>

## COPPER.

This is peculiarly an article of *incipitis usus*, its character to be determined by its condition and destination.

<sup>1</sup> 4 Rob. 95.<sup>2</sup> 4 Rob. 354.<sup>3</sup> *Euphemia*, Stew. 565.<sup>4</sup> *Ringende Jacob*, 1 Rob. 92.<sup>5</sup> *Jonge Margaretha*, 1 Rob. 195.<sup>6</sup> *Euphemia*, Stew 567.<sup>7</sup> *Ringende Jacob*, 1 Rob. 92. n.

## List of Articles.

Thus, in the case of the *Charlotte*<sup>1</sup>, the cargo consisted of a quantity of copper, part in sheets: the vessel was bound on a voyage from Stockholm to Amsterdam.

The Court condemned that part which, on reference to the official authorities of H. M. Dockyard, was reported to be fit for sheathing vessels, referring to subsequent consideration the decision of the question raised, respecting the effect of the treaty between this country and Sweden of the 25th July, 1803, as to other descriptions of the same article.

## IRON.

This formed part of the cargo in the case of the *Ringende Jacob*<sup>2</sup>, and was referred to the officers of the King's Yard to determine whether it was to be considered as naval stores or not.

In the *Jonge Margaretha*<sup>3</sup>, the Court observed that iron was treated with indulgence, though anchors and other instruments fabricated out of it were directly contraband.

## STEEL.

This article appears to have been brought before the Court in the cases of the *St. Nicholas* and the *Louisa*, March 3. 1746.<sup>4</sup> In both of them part of the cargo, consisting of pitch and tar, was condemned as contraband, the consideration of the remainder being reserved; but no trace has been discovered of any sentence relating to it being delivered on a future day.

In the case of the *De Hoop*<sup>5</sup>, 14 July, 1801, the

<sup>1</sup> 5 Rob. 275.

<sup>2</sup> 1 Rob. 92. a.

<sup>3</sup> 1 Rob. 195.

<sup>4</sup> Pp. 57. 61.

<sup>5</sup> Cited in the *Euphemia*, Stew. 566.

question was again brought forward; and *steel* of which a sword had been made, and which was produced under affidavit in Court, was under the circumstances pronounced not to be contraband. List of Articles.

#### PITCH AND TAR.

These articles were not formerly considered contraband, unless they had been prohibited by special notification<sup>1</sup>: about the year 1656 they appear to have been considered of a disputable nature<sup>2</sup>, and are now held to be in general subject to condemnation as contraband in a maritime<sup>3</sup> war.

The right of carrying them was long a subject of much contention between the government of this country and that of Sweden.<sup>4</sup>

The former contending that they were contraband, and condemning them as such. Thus in the celebrated case of the *Med Gud's Hielp*, Aug. 9. 1745<sup>5</sup>, of which a report will be found at page 191. The vessel and cargo were entirely the property of Swedes, and bound to *Port Louis* in *France*. Her cargo consisted principally of *pitch* and *tar*; after long argument, the Court pronounced sentence that these articles were contraband and not excepted in the Swedish Treaty, condemned the ship and cargo, and the sentence was afterwards, after mature deliberation, affirmed by the Court of Appeal.

Similar decisions were given in the cases of the *S. Nicholas*<sup>6</sup>, *Louisa*, and *Heva*, *March* 3. 1746. These were Swedish vessels bound to enemies' ports,

<sup>1</sup> P. 195.

<sup>2</sup> *Maria*, 1 Rob. 372.

<sup>3</sup> *Sarah Christina*, 1 Rob. 241.

<sup>4</sup> *Neptunus*, 6 Rob. 405.

<sup>5</sup> *Maria*, 1 Rob. 373.

<sup>6</sup> Pp. 57. 61, 62.



List of Articles.

and the cargo also the property of Swedes. That part of it consisting of *pitch* and *tar* was immediately condemned as contraband; the consideration of other parts and of the effect on the ship of such a cargo being reserved for further consideration: the final result, however, has not been ascertained.

The *De Providentia*<sup>1</sup>, March 26. 1748, was that of a Danish vessel, laden at Stockholm, on account of Danes, with a cargo of *pitch* and *tar*, bound to France; this was also condemned.

The Government of Sweden maintained on their part that these articles were not contraband, more especially when they were the produce of the exporting country.

After long and passionate discussion, it was agreed that these articles should be considered not as absolutely contraband, nor yet as entirely free and innocent, but subject to seizure for pre-emption<sup>2</sup>; and accordingly, in the modern practice of the British Courts of Admiralty, goods of this description, being the produce of Sweden, the actual property of Swedes, and conveyed by their own navigation<sup>3</sup>, were held, upon a principle of indulgence to the native products and ordinary commerce of that country, subject only to the milder rights of pre-occupancy and pre-emption<sup>4</sup>, and this relaxation was afterwards extended to such goods on board a foreign ship.<sup>5</sup>

To entitle a party to the benefit of this privilege, there must be a perfect *bona fides* on his part.

In the case of the *Sarah Christina*<sup>6</sup>, the cargo consisted in part of pitch and tar, laden on board a Swedish

<sup>1</sup> P. 144.

<sup>2</sup> *Neptunus*, 6 Rob. 405.

<sup>3</sup> *Christina Maria*, 4 Rob. 166.

<sup>4</sup> *Maria*, 1 Rob. 373.

<sup>5</sup> *Apollo*, 4 Rob. 164. p. 247. *Vide Treaty with Sweden*, p. 247.

<sup>6</sup> 1 Rob. 241.

vessel, bound ostensibly to Cagliari, but taken going into Cherbourg under a pretended excuse of want of water. The Court, distrusting the explanation given as to the change in the voyage, considered it the case of a Swedish vessel carrying pitch and tar to a French port, under a pretended neutral destination, and condemned them as contraband.

List of Articles.

ROSIN.

In the case of the *Sta. Boa Ventura*<sup>1</sup>, a Portuguese ship, bound to Nantz, part of a quantity of rosin on board was condemned, as belonging to the same party who was the owner of other articles which had been pronounced to be contraband; the remainder was restored.

In the case of the *Nostra Signora de Begona*<sup>2</sup>, the Court considered that its character was to be determined by the nature of its port of destination, and, as in that case the port, viz. of Nantz, was not a military one, decreed restitution.

SAIL-CLOTH.

This article was in the case of the *Neptunus*<sup>3</sup> pronounced to be universally contraband, even on destination to ports of mere mercantile naval equipment; it is expressly forbidden in the treaty with Denmark.<sup>4</sup>

TALLOW.

The consideration of this article depends upon its probable use as deduced from its port of destination.

In the case of the *Neptunus*<sup>5</sup>, the cargo was a miscellaneous one, consisting partly of tallow; the vessel was bound to Amsterdam, but as that was a great mercantile

<sup>1</sup> P. 137.

<sup>2</sup> 5 Rob. 97.

<sup>3</sup> 3 Rob. 108.; *Oster Risoer*, 4 Rob. 199.

<sup>4</sup> *Eenron*, 2 Rob. 6.

<sup>5</sup> 3 Rob. 108.

List of Articles.

port, as well as one of naval equipment, the Court directed it to be restored.

TAR. Vide Pitch.

## TIMBER.

This is in general as much a thing of ambiguous use as anything can be. Whether contraband or not, will therefore depend upon its nature and destination. Thus, it may be of a particular form, as knee-timber, which is crooked timber, peculiarly useful for the building of ships, or it may be distinguished by its dimensions of size, and on this account fall under the denomination of contraband. If there be no peculiarity of this kind, it may be more favourably considered; and in such consideration, much will depend upon the nature of the port to which it is going: if its destination be a military port, this circumstance will tend greatly to fix upon it the character of ship timber, and expose it to confiscation, a penalty from which it would be exempt, if the port were of a mere commercial nature.

In deciding upon such a cargo, the Court usually directs the opinion of persons competent to decide upon the subject to be taken either by affidavit<sup>1</sup> or in the form of a more regular report, or by the administering interrogatories<sup>2</sup> specially prepared for that purpose.<sup>3</sup>

<sup>1</sup> *Jonge Margaretha*, 1 Rob. 195.

<sup>2</sup> P. 68.

<sup>3</sup> European fir comes under the form of *baulk* and *deal* timber.

*Baulk* timber consists of the largest square bars that can be cut from the trunks of trees, being generally from eight to sixteen inches square, and sometimes extending to sixty feet in length or more.

Deals are rectangular bars, from two and a half to three inches in thickness.

These deals are again divided and subdivided into deals of different thickness for different purposes.

Boards are bars from seven inches to any greater breadth, and from half an inch to two inches in thickness.

Planks are all boards above nine inches in breadth. — *Nicholson on Carpentry*.

The following are several descriptions of timber, which have been adjudicated upon : —

List of Articles.

#### FIR TIMBER, BALKS.

These are squared firs not sawn into planks.

In the case of the *Brigitta Catrina*, June 28. 1748<sup>1</sup>, although the produce of the neutral country, they were condemned, being of considerable length and useful for shipping.

But in the more modern case of the *Endraght*<sup>2</sup>, on a voyage to *Dort* in *Holland*, and the cargo of which consisted in part of this description of timber, the greater part being only thirty feet in length, one or two extending to that of fifty feet, the Court directed the usual reference to determine their character.

And, subsequently, in the case of the *Twende Brodre*<sup>3</sup>, the Court observed that it was its every-day practice to restore spars and barks of ordinary magnitude, unless there was something special in the circumstances attending them to show that they have a positive destination to naval purposes.

#### DEALS, PLANKS, TIMBER.

The character of these articles depend much upon their destination, whether to a port of naval military equipment or to one of a commercial nature.<sup>4</sup>

In the case of the *Fredericus Ildus*, May 26. 1747<sup>5</sup>, the cargo consisted in part of hemp and fir deals, on a voyage to Bourdeaux; the hemp was condemned as contraband, and the fir deals were also confiscated; but upon the ground of their belonging to the same owner.

<sup>1</sup> P. 155.

<sup>2</sup> 1 Rob. 22.

<sup>3</sup> 4 Rob. 36.

<sup>4</sup> *Twende Brodre*, 4 Rob. 38.

<sup>5</sup> P. 109.

## List of Articles.

In the case of the *Fortune de la Mer*<sup>1</sup>, they were restored.

In that of the *De Tweelinge*<sup>2</sup>, a Prussian vessel, on a destination to Brest and Rochelle, fir timber, forming part of the cargo, was condemned.

In the explanatory article of the Danish Treaty of 1670<sup>3</sup>, timber for shipbuilding was declared to be contraband, fir planks, *planches de sapin*, only excepted.

The effect of such an exception, however, must not be considered as rendering this article generally contraband; for in the case of the *Ringende Jacob*<sup>4</sup>, the Court observed that it could not agree with the argument that had been advanced, that, because an article was excepted in some treaties as not contraband, it was to be so considered where no exception in other treaties was expressed.

## MASTS.

These are liable to be considered as contraband in the judgment of even the most jealous advocates of neutral commerce, and are always considered as such unless protected by treaty, and that without reference to their destination.

In the case of the *T'slots Copenhagen*<sup>5</sup>, Feb. 21. 1746, several masts on board were condemned as contraband, being large enough for men-of-war.

In the *Neutralität*<sup>6</sup> reference is made to the cases of some Dantzic ships, taken carrying masts to Cadiz, and which were restored; but these appear to have been cases of proprietors exporting the produce of their own territory, or that of neighbouring ports.

<sup>1</sup> P. 33.

<sup>2</sup> P. 105.

<sup>3</sup> July 4. 1780, p. 239.; *Endraght*,  
1 Rob. 22.

<sup>4</sup> 1 Rob. 92.; but see *ante*,  
p. 19.

<sup>5</sup> P. 48.

<sup>6</sup> 3 Rob. 296.

## CONTRABAND.

ii.

In the case of the *Eleanora*<sup>1</sup>, the cargo consisted in part of BOAT AND HAND MASTS, which were both condemned; and in the case of the *Twende Brodie*<sup>2</sup>, the same decision was pronounced with reference to the latter article.

List of Articles.

### PIPE STAVES.

In the *Fortune de la Mer*<sup>3</sup> they formed part of the cargo, and were restored; and in that of the *De Tweelinghe*<sup>4</sup>, the Court, in passing judgment, observed that singly they would not be contraband.

### PLANKS.

Vide DEAL.

Where fitted for shipping, these articles are liable to be treated as contraband, as was done in the case of the *Juffrow Susannah*.<sup>5</sup> The ship was bound from Dantzic to Brest with a cargo of planks, &c., the property of Dantzicker. Interrogatories were administered to witnesses to prove that these articles were fitted for shipping; and upon this evidence they were condemned.

### OAK PLANKS.

In the case of the *Fortune de la Mer*<sup>6</sup>, these, it would appear, would have been condemned as contraband, being fitter for shipbuilding than any other purpose, but were restored as the produce of the neutral country.

### RUCKERS.

In the case of the *Eleanora*<sup>7</sup>, ruckers from 20 to 26 feet in length, fit for boat masts, were condemned as contraband.

<sup>1</sup> 6 Rob. 331.

<sup>2</sup> 4 Rob. 38.

<sup>3</sup> P. 33.

<sup>4</sup> P. 108.

<sup>5</sup> P. 67.

<sup>6</sup> P. 39.

<sup>7</sup> 6 Rob. 331.

List of Articles

SPARS.

In the case of the *Brigitta Catrina*<sup>1</sup>, these articles were of considerable length, and useful for shipping, and were condemned as contraband.

They formed part of the cargo in the case of the *Twende Brodie*<sup>2</sup>, a Danish vessel taken on a voyage to Brest, or St. Maloes. The directions given to the captain invested him with a discretionary power of selecting either port, and this power, it appeared in evidence, he had, previous to capture, determined to exercise in favour of the latter, a commercial port. Under these circumstances the Court decreed restitution, observing that it was an every day's practice to restore spars of ordinary magnitude, unless there was something special in the circumstances attending them to show that they had a positive destination to naval purposes; but in the subsequent case of the *Eleanora*, before cited, with a destination to Amsterdam, on the report of the Commissioners of Her Majesty's Dockyard, they were condemned as contraband.

STAVES.

Vide p. 95.

In the case of the *De Juffrow Susannah*<sup>3</sup>, bound from Dantzic to Brest, the cargo consisted partly of pipe staves; these were directed to be restored. In that of the *Friendship*<sup>4</sup>, which was that of a vessel condemned as a transport in the service of the enemy, a quantity of hogshead staves were also condemned; but it does not appear from the report whether they were the property of the owner of the vessel, and therefore condemned, or

<sup>1</sup> P. 155.

<sup>2</sup> 4 Rob. 33.

<sup>3</sup> P. 74.

<sup>4</sup> 6 Rob. 421.

whether they were considered as being themselves contraband from any peculiar circumstances. List of Articles.

WALES.

These are planks forming the sides of the vessel, and therefore liable to condemnation. In the case of the *Fortune de la Mer*<sup>1</sup>, they appear to have been restored, as the produce of the neutral country.

WOOD.

In the case of the *St. Boa Ventura*<sup>2</sup>, heavy wood of use in shipping was held to come under the nature of contraband, as part of the equipage of ships.

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COALS.

In the case of the *Young Andreas*<sup>3</sup>, the cargo consisted in part of seventy tons of coals; but as the captors did not insist on their condemnation, they were restored, the Court declining to express any opinion respecting them further than to observe that they were of great use to an enemy.

In the present application of steam to purposes of war, this article would, without doubt, if destined to a port of naval military equipment, be considered as falling under the description of contraband. An opinion to this effect was expressed in Parliament in July, 1854, by Sir James Graham, in answer to a question addressed to him, as First Lord of the Admiralty, on that subject.

TOBACCO.

Vide p. 86.

This is an article which has given rise to much con-

<sup>1</sup> P. 34.

<sup>2</sup> 141.

<sup>3</sup> P. 99.



## List of Articles.

troversy; the question was, in former times, violently debated between the English and the Spaniards, the latter maintaining that, as an article of provision, it fell under the list of contraband articles. (*Zouch, de Jure Fec.*, part 2. §§ 8. 2. 12.) In this opinion *Heineccius* expresses his concurrence. (*De nav. ob vect.* § 14.) *Bynkershoek*, however, considers that as it cannot be of any use as an instrument of destruction, it ought not to be included in the list of prohibited articles. (*Quæst. Jur. Publ.* l. 1. c. 10.)

In the case of the *Adams* (*Edw.* 305.), the question before the Court related to a breach of the Revenue Laws, and in the course of his judgment Lord Stowell entered into an examination of the nature of this article, and expressed his opinion that it could not be considered to be one of food.

## WAX.

In the case of the *De Endraght*<sup>1</sup>, wax, forming part of the cargo, was ordered to be restored.

## QUASI-CONTRABAND.

## DESPATCHES — PASSENGERS.

## Quasi-contraband.

ASSISTANCE may, however, be rendered to an enemy by a neutral in many other ways than by the supply of such material articles as have been already mentioned, particularly by the communication of information and orders

<sup>1</sup> P. 123.

from the belligerent government to its officers abroad, or the conveyance of military passengers. Quasi-contraband.

That more aid may thus be rendered to any enemy than by any quantity or description of cargo is evident, and accordingly such a proceeding is justly considered as being at variance with the duties of a neutral, and contrary to the precepts of international law, and may be not inaptly termed *quasi-contraband*.

In the case of contraband, except under peculiar circumstances of aggravation and *mala fides*, it has been considered sufficient penalty to subject the articles in question to confiscation. To apply such a punishment in these cases would, however, be ridiculous, and it has therefore become necessary to resort to a more stringent measure, viz., that of condemning the vessel, and sometimes even the cargo.<sup>1</sup>

## I. WITH RESPECT TO DESPATCHES.

On the capture of a vessel it is the duty of the master Despatches. to deliver up all papers in his possession immediately. By the 17th and other interrogatories, particular inquiry is made as to all papers that may have been on board at the time of the sailing of the vessel. In addition, therefore, to the delivery of the papers in his own custody, the master is bound, on his examination, to give any information he may be in possession of respecting papers that may have been brought on board, or received by other parties than himself, and which may not be under his control.

Any concealment<sup>2</sup> in these matters will be severely visited as a breach of the duty he owes, as a neutral, to

<sup>1</sup> *Atalante*, 6 Rob. 459.

<sup>2</sup> *Caroline*, 6 Rob. 461. n.

Quasi-contraband.  
Despatches.

the belligerent; nor will it be permitted him to plead ignorance of the transaction, or that he has been the victim of superior force. If the service be injurious, that will be sufficient to entitle the belligerent to protect his interests by enforcing the penalty of confiscation; the neutral master must seek his redress for any loss or damage he may sustain from those who have been the means of placing him in such a position.<sup>1</sup>

Private letters.

Should the papers<sup>2</sup> in question prove to be private letters, they are viewed in a favourable light; the conveyance of them will entail no penalty, although it may subject the parties to the expense and inconvenience of being brought in for examination. Where there are any circumstances of a suspicious nature connected with them, great care and precaution are necessary.

In the case of the *Richmond*<sup>3</sup>, it appearing that the master had received some letters from prisoners of war at *St. Helena*, to be delivered at the *Isle of France*, under the pretended sanction of a British officer, the Court expressed its disapprobation of such a proceeding without the express previous permission of the proper authorities.

Public despatches.

WITH REFERENCE, however, to public despatches, the case is very different; these are capable of producing the most important consequences in the operations of the enemy. The conveyance of them is a service, therefore, which, in whatever degree it exists, can only be considered in one character, as an act of the most noxious and hostile nature.

In establishing the distinction between public and private despatches, the consideration of the apparent contents is entitled to little weight, as it is evidently so easy to

<sup>1</sup> *Caroline*, 4 Rob. 261.; *Orozembo*, 6 Rob. 435.; *Caroline*, ed. 461. n.

<sup>2</sup> *Caroline*, 6 Rob. 469.  
<sup>3</sup> 6 Rob. 325.

disguise their real meaning, and notorious how frequently and effectually this is done. Quasi-contra-  
band.

Public despatches may be defined to be, all official communications of official persons on the public affairs of the government<sup>1</sup> relating to the public business of the enemy, be it great or small. The true criterion is, that they are on the public business of the state, and passing between public persons for the public service. Despatches.

The case of the *Atalanta*<sup>2</sup> was that of a Bremen ship, which sailed from the Isle of France, and on board which were found despatches from the governor of that island, addressed to different public offices at Paris, relating to the distress of the colony, and applying for assistance.

These had not been delivered up with the ship's papers, but were discovered concealed in the possession of one of the supercargoes.

In explanation it was stated that the governor had detained the ship several days, and forced the first supercargo, in spite of his remonstrances, to take charge of these papers; that, on the appearance of any strange vessel in sight, he was instructed to deliver them to a colonel in the French service, who had shipped himself as a planter; that this had been done, and by him they had been transferred, concealed in a box of tea, to the second supercargo, in whose possession they were found.

The Court observed that it was satisfactorily demonstrated, that there were papers received on board as public despatches knowingly by those who were the agents of the proprietors of both ship and cargo, and accompanied with circumstances of a fraudulent concealment and suppression. That the simple conveyance of despatches was a

<sup>1</sup> *Caroline*, 6 Rob. 465.

<sup>2</sup> 6 Rob. 443.

Quasi-contra-  
band.  
Despatches.

service highly injurious to the other belligerent, and that a neutral, by rendering that service, places himself in the state of an enemy, and is justly to be considered in that character, and condemned the ship and cargo.

In the case of the *Sally*<sup>1</sup>, an American ship, a packet was found on board, which did not appear to have contained more than a letter addressed to the Prefect of Isle of France, and providing for the payment of his salary, but which had not been produced to the captors.

The Court, observing on the then recent occurrence of many similar cases, declared its determination to consider the non-production of such papers to the captors in the first instance as a proof of fraud, and condemned the ship, but, under the circumstances, restored the cargo.

But where the vessel<sup>2</sup> had sailed before the commencement of the war, and the despatches from the French minister were altogether of a commercial nature, the case received a favourable consideration, and restitution was decreed.

From ambas-  
sador of enemy  
in neutral  
country.

AN EXCEPTION is also made where the despatches were from an ambassador of the enemy resident in a neutral country, and addressed to his own government.

Thus, in the case of the *Caroline*<sup>3</sup>, this vessel was captured on a voyage from New York to Bourdeaux, and had on board despatches from the French minister in America to the government in France.

Sir W. Scott, in giving sentence, observed, "This is not the case of despatches from any part of the enemy's territories, whose commerce and communication of every kind the other belligerent has a right to interrupt, but from a neutral country which has a right to preserve its relations with the enemy, and whose integrity in not

<sup>1</sup> 6 Rob. 456.

<sup>2</sup> *Sally*, cited 6 Rob. 456.

<sup>3</sup> 6 Rob. 461.

participating in any degree in a communication of the nature of hostility against you must be presumed.

Quasi-contraband.  
Despatches.

The person too employed in the correspondence is not an executive officer of the Government acting simply in the conduct of its own affairs within its own territories, but an ambassador resident in a neutral state for the purpose of carrying on the communications of peace and amity for the interests of his own country primarily, but at the same time for the furtherance and protection of the interest, which the neutral country also has in the continuance of these relations.

The neutral violates no duty in bearing despatches which, as far as he knows, may be presumed to be of an innocent nature and in the maintenance of a pacific connection; but, in so doing, he is fairly subject to the inconvenience of having his vessel brought in for examination."

The ship and cargo were restored on payment of captor's expenses.

## II. CONVEYANCE OF PASSENGERS.

In judging of the conduct of a neutral vessel, on board which subjects of the enemy may be found as passengers, a distinction is naturally made as to their character — those in a mere civil capacity being in general only subject to a temporary detention, accompanied however with loss of property, those in the actual military service of the enemy being detained as prisoners of war: in the case of persons of the latter description it is immaterial what may be the number conveyed, as fewer persons of

Passengers.  
Character.  
Number.

Quasi-contraband.  
Passengers.

high character may be of more importance than a greater number of persons of lower condition.<sup>1</sup>

A more favourable consideration is applied to the case of invalided soldiers or disabled sailors, and to that even of a military officer proceeding on a voyage as an ordinary passenger and at his own expense.<sup>2</sup>

In their case, as in that of civilians, much would depend upon the circumstances under which they were travelling and their connection with the belligerent government.

In the case of the *Friendship*<sup>3</sup>, there were on board ninety passengers, French mariners shipped under the direction of the French minister in America on a voyage from Baltimore to Bordeaux; the cargo consisting of a few articles of commerce, and being merely a nominal one.

Transport.

Sir Wm. Scott, having observed that he knew of no precise technical definition of transport vessels more than this, that they were vessels hired by the Government to do such acts as should be imposed upon them in the military service of the country, expressed his opinion that this vessel was to be considered as a French transport, and that it was not necessary to prove that these parties were going on an immediate active expedition.

Looking at the description given of the men on board, he was satisfied that they were as effective members of the French marine as any could be, and that their conveyance could not be an innocent occupation of the vessel. He, therefore, condemned the ship and cargo.

The case of the *Orozembo*<sup>4</sup> was that of a vessel which had been engaged for the purpose of conveying three military officers and two persons in civil departments to

<sup>1</sup> *Orozembo*, 6 Rob. 434.

<sup>2</sup> *Friendship*, 6 Rob. 428.

<sup>3</sup> 6 Rob. 420.

<sup>4</sup> 6 Rob. 430.

the settlement of the enemy. Of the nature of the service in which he was engaged<sup>1</sup>, the master, it appeared, was entirely ignorant. Quasi-contraband.  
Passengers.

Sir Wm. Scott, with reference to the military officers, observed, that the principle on which he determined the such case was, that the conveying persons to the colony of an enemy, who are there to take on themselves the exercise of their military functions, will lead to condemnation, and that the Court is not to scan with minuteness the number of persons that are so carried. Military.

With reference to the civilians on board, he remarked<sup>2</sup> that, in that case, it was not necessary to determine whether the principle would apply to them alone: on principle, however, it appeared to be but reasonable that, whenever it is of sufficient importance to the enemy that such persons should be sent out on the public service at the public expense, it should afford equal ground of forfeiture; nor could he admit the plea of ignorance in extenuation of the offence. He therefore pronounced that the vessel was liable to be considered as a transport in the service of the enemy, and, as such, subject to condemnation. Civilians.

### III. CONTRABAND AS DECLARED BY TREATY.

The subject of contraband has formed the substance of several articles in treaties of peace and commerce entered into at different times between this country and foreign powers. Extracts from treaties containing these articles will be found in the Appendix. Treaties.

The course of events which have occurred in the last sixty or seventy years, and the general prevalence of

<sup>1</sup> *Orozembo*, 6 Rob. 433.

<sup>2</sup> *Id.*, 6 Rob. 434.



Treaties.

hostilities, during the early part of that time, have in many cases put an end to particular treaties, it being a general principle that the intervention of war between two countries determines all treaties entered into between them.

A reference to particular treaties is, however, sometimes necessary in illustration of the reports of cases, the decision of which may have depended upon the construction of them. Many of the cases in this volume, extracted from the papers of Sir George Lee, afford proofs of this necessity.

Some of these treaties, again, from the peculiar relations between the countries, still continue in force, as is the case with Denmark and Sweden. The learned Judge of the Admiralty Court, Dr. Lushington, in giving judgment in the case of the *Franciska*, Jan. 27. 1855, declared the treaties of 1670 with Denmark, and of 1661 with Sweden, to be still in force.

In other cases they have been confirmed and revived by express reference in later treaties between the same powers.

Thus, in the additional articles between this country and Spain, signed at Madrid, August 28. 1814,

It is agreed that, "All the Treaties of Commerce which at that period (viz. previously to the year 1796) subsisted between the two nations are hereby ratified and confirmed."<sup>1</sup>

In the treaty with Turkey, concluded at the Dardanelles Jan. 5. 1809<sup>2</sup>,

Art. 4. It is agreed that, "The Treaty of Capitulation agreed upon in the Turkish year 1086, A. D. 1675 . . . shall continue to be observed and maintained, as if the

<sup>1</sup> *Frau Ilseke*, 4 Rob. 64.

<sup>2</sup> *Hertslet*, 2 v. p. 271.

<sup>3</sup> *Id.* p. 373.

the relations between the two countries had suffered no *Treaties*. interruption ;”

Or they have been referred to in, and made parts of, treaties between different states.

Thus, in the treaty between Great Britain and Mexico London, Dec. 26. 1826<sup>1</sup>, it is stipulated that the subjects of the former country shall enjoy all the privileges and immunities they were entitled to under the convention with Spain of the 14th July, 1786 ;

Or, lastly, the reference may be still more general, as in the treaty with Portugal, signed at Rio de Janeiro, 19th Feb. 1810, which stipulates in the 28th Art.,

“ That under the name of contraband shall be comprehended, not only arms, &c., . . . but generally all other articles that may have been specified as contraband in any former treaties concluded by Great Britain or by Portugal with other powers.”<sup>2</sup>

<sup>1</sup> *Hertslet*, 3 v. p. 253.

<sup>2</sup> *Hertslet*, 2 v. p. 59., and *post* App. p. 248.

*The following is a List of the Articles referred to under the Head of Contraband, in the Treaties from which Extracts will be found in the Appendix, p. 207.*

Ammunition, 209.	Barley, not contraband, 227. 230. 234. 240.
Anchors, not contraband, 227. 231. 234. 240.	Beams, not, 227. 234.
Armature, 226.	Beer, not, 227. 231. 234. 240.
Armour, 230.	Belts, 210. 213. 220. 221. 227. 230. 234. 238, 239, 240. 243. 247, 248, 249.
Arms, 208. 209. 213. 219. 226. 233. 240. 247, 248. 249.	Boards, not, 227. 231. 234.
Articles, 248.	Bombs, 210. 213. 219. 221. 230. 238, 239, 240. 243, 244. 248, 249.
Backs, 209.	„ and fuses, 233. 247.
Ball, 209. 219. 230. 238, 239, 240. 243. 248, 249.	Brass, not, 234. 240. 247, 248.
Bandoliers, 200. 210. 213. 219. 221. 226. 230. 239, 240. 243. 247, 248, 249.	Brass wire, not, 247, 248.

Breastplates, 210. 213. 220. 234. 239.  
 Breasts, 219.  
 Bridles, 238, 239, 240.  
 Bullets, 219. 221. 226. 230. 238, 239. 244.  
 247.  
 Butter, not, 227. 231. 234. 240.  
 Cables, not, 234. 240.  
 Cannon, 221. 230. 238, 239, 240. 243, 244.  
 248, 249.  
 Cannon-balls, 210. 213. 233.  
 Carcasses, 239, 240. 243. 247, 248, 249  
 Carriages, 221.  
 " for cannon, 239, 240, 241. 243.  
 248, 249.  
 " for guns, 219.  
 Cartouch-boxes, 238, 239. 244.  
 Cases of pistols, 220.  
 Cavalry equipment, 247.  
 Cheese, not, 227. 231. 234. 240.  
 Cloth, not, 227. 240.  
 Clothes, not, 230. 234.  
 Clothing, not, 227.  
 Coals, not, 227. 230. 234. 240.  
 Coats of mail, 210. 213. 221. 226. 234.  
 247.  
 Commodities, not, 231.  
 Copper, not, 227. 230. 234. 240.  
 " red, 247, 248.  
 " sheets, 239. 243. 249.  
 Cordage, not, 231. 239. ? 240. 243. ? 249. ?  
 Corn, not, 209. 220, 221. 227. 230. 234.  
 240.  
 " except to besieged places, 209.  
 Corsets, 226.  
 Cotton, not, 227. 230, 231. 234. 240.  
 Cuirasses, 210. 213. 230. 238, 239. 243,  
 244. 247, 248, 249.  
 Dried fish, not, 227. 231.  
 " flesh, not, 231.  
 Dresses, not, 230.  
 Engines, 208.  
 Fir plunks, 239. 243. 249.  
 Fire-arms, 219. 221. 230. 238. 244.  
 Fire-balls, 210. 213. 219. 226. 233.  
 Fire-crancels, 219. 221.  
 Fish, not, 227.  
 Flax, not, 227. 231. 234. 240.  
 Flesh, not, 227.  
 Flints, 238. 240.  
 Flintstone, 239.  
 Furniture for horses, 213. 227. 221. 234.  
 239. 243. 249.  
 " military, 209.  
 " warlike, 208.  
 Fusees, 210, 213. 238, 239.

Garments, not, 227.  
 Gold, not, 227. 230.  
 " uncoined, 234. 240.  
 " coined, 227. 234. 240.  
 Grain, 220, 221. 230.  
 Grenades, 210. 213. 219, 220. 228. 230.  
 233. 238, 239, 240. 243, 244. 248, 249.  
 Guardship, 213. 247.  
 Gun, 208. 210. 213. 226.  
 " great, 233.  
 Gunpowder, 209, 210. 213. 219. 226. 233.  
 239, 240. 243. 247, 248, 249.  
 Halberts, 210. 213. 219. 221. 226. 230. 233.  
 239, 240. 243. 247, 248, 249.  
 Harnesses, 220. 230. 240. 248.  
 Harquebusses, 240. 248.  
 Headpieces, 210. 213. 221. 230. 233. 237.  
 240. 243. 248, 249.  
 Helmets, 210. 213. 219. 228. 233. 240. 247,  
 248.  
 Hemp, 227. 231, 234. 239, 240. 243. 247.  
 249.  
 Herrings, 248.  
 Holsters, 210. 220. 227. 239, 240. 243. 248,  
 249.  
 Horses, 209, 210. 220, 221. 227. 230. 239.  
 240. 248.  
 Implements, 208. 210. 234. 239, 240. 243.  
 249.  
 " troop, 240.  
 " fit for war, 208. 226.  
 Iron, 227. 230. 234. 240.  
 " unwrought, 249.  
 " bars, 247, 248.  
 " barrel, 209.  
 Javelin, 219. 221. 239, 240. 243. 248, 249.  
 Lance, 210. 213. 226. 230. 233. 239. 243,  
 244. 247. 249.  
 Lead, not, 227. 234. 236. 240.  
 Linen, not, 230.  
 Logs, not, 231.  
 Machines, warlike, 208.  
 Manufactured articles, 247.  
 Mariners, 226.  
 Masts, not, 227. 231.  
 Match, 210. 213. 219. 221. 226. 230. 233.  
 238, 239, 240. 243. 244. 247, 248.  
 Material, not, 227. 240.  
 Men of war, 208.  
 " to besieged places, 209.  
 Money, 208. 210. 213. 226. 247.  
 Morions, 220.  
 Mortars, 210. 213. 230. 233. 238, 239, 240.  
 243, 244. 247, 248, 249.  
 " pieces, 219. 221. 226.

- Munition, 208.  
 Muskets, 209, 210, 213, 219, 221, 226, 228, 233, 239, 243, 249.  
     " balls, 210, 233, 247.  
     " bullet, 203.  
     " shot, 226. •  
     " stocks, 230.  
     " rests, 210, 213, 219, 234, 239, 240, 243, 247, 248, 249.  
 Oil, not, 220, 221, 227, 231, 234, 240.  
 Ordnance, 219.  
     " pieces, 226.  
 Partisans, 230.  
 Petards, 210, 213, 219, 220, 221, 230, 233, 239, 240, 243, 247, 248, 249.  
 Pikes, 210, 213, 219, 220, 226, 230, 233, 238, 239, 240, 243, 244, 247, 248, 249.  
 Pistols, 210, 213, 238, 239, 240, 247, 249.  
     " stocks, 230.  
 Pitch, 227, 231, 234, 240, 247.  
     " hoops, 220, 221.  
 Planks, 227, 234, 240, 247, 248.  
     " oak, 247.  
 Pots, 219.  
 Pouches, 238.  
 Powder, 221, 226, 230, 238, 239, 244.  
 Provisions, 200, 208, 213, 226, 227, 231, 234, 240, 247.  
     " except to besieged places, 209.  
 Pulse, 209, 220, 221, 227, 230, 234, 240.  
 Resin, 239, 240, 243, 247, 249.  
 Rests, 220, 226.  
 Ropes, 227, 234.  
 Sabres, 244.  
 Saddles, 238, 239, 244.  
     " holsters, 221.  
 Sails, 227, 231, 234, 239, 240, 243, 245, 249.  
     " cloths, 234, 240.  
 Salt, 220, 221, 227, 231, 234, 240.  
 Salted fish, 227, 231, 234, 240.  
 Salted flesh, 231, 234, 240.  
 Saltpetre, 210, 213, 219, 220, 226, 230, 233, 238, 239, 240, 243, 244, 247, 248, 249.  
 Saucisses, 239, 240, 243, 247, 248.  
 Shield, 230.  
 Ships, 226.  
     " of war, 210, 213, 247.  
     " masts, 234, 240.  
     " articles for repairs of, 234, 240.  
 Silk, 227, 230, 234, 240.  
 Silver, 221, 227, 230.  
     " coined, 227, 234, 240.  
     " uncoined, 234, 240.  
 Smoked flesh, 227, 234, 240.  
 Soldiers, 210, 213, 220, 226, 227, 230.  
 Spears, 210, 213, 226, 233.  
 Spices, 227, 230, 234, 240.  
 Steel, 247, 249.  
 Stuff, manufactured, 230.  
 Sugar, 227, 231, 234, 240.  
 Sulphur, 238, 239, 244.  
 Swords, 210, 213, 219, 220, 226, 230, 233, 238, 239, 240, 243, 247, 249.  
 Tar, 234, 239, 240, 243, 247, 249.  
 Tallow, 240.  
 Timber, 239, 240, 243, 249.  
 Tin, 227, 230, 234, 240.  
 Tobacco, 221, 230, 234, 240.  
 Troop horses, 247.  
 Uncoined gold and silver goods, 227, 230.  
 Unworked, 240.  
 Unwrought iron, 239, 243, 284.  
 Utensils of war, 221.  
 Vessels, articles fit for equipment of, 239.  
     " of war, 249.  
 Victuals, 208.  
 Wearing apparel, 234, 240.  
 Wheat, 220, 221, 227, 234, 240.  
 Wine, 220, 221, 227, 231, 234, 240.  
 Wood, 227, 231.  
 Wool, 227, 234, 240.  
 Woollen, 230, 234.

## IV. CONTRABAND BY NOTIFICATION.

## Notification.

Under this head may also be included the question relating to Orders in Council, and Instructions to Privateers. These, it must be presumed<sup>1</sup>, have been regularly communicated by their respective Governments to neutral nations.

In giving judgment in the case of the *De Tweelinge*, of which a report will be found at p. 108., the Court stated, "That Sovereigns have a right to declare what shall be deemed contraband, and have always done so." And again, in that of the *De Klein David*<sup>2</sup>, "Princes declare sometimes things to be contraband, which are not so in their nature, and in these cases notifications thereof are given to other Sovereigns."<sup>3</sup>

It must not, however, be concluded that Sovereigns claim for themselves the power of declaring, at their own mere will and pleasure, what shall be held to be contraband, independent of the nature of the articles themselves, and the circumstances of the times; the more correct opinion would probably be found to be, that the effect of such notification was, rather to state a determination, on their part, to consider as contraband articles, which, though in strictness falling under that category, had not been previously treated as such, or which, although of an innocent nature, had, from altered circumstances of times, become applicable to purposes of war, and therefore liable to confiscation.

In his celebrated judgment in the case of the *Maria*<sup>4</sup>, a Swedish vessel, Lord Stowell emphatically states,

<sup>1</sup> P. 49.

<sup>2</sup> P. 177.; see also p. 40.

<sup>3</sup> But such notification in the opinion of Sir L. Jenkin, must be a

public notification to all the world.  
*Vide* p. 195.

<sup>4</sup> 1 Rob. 350.

“That it is his duty, as Judge of the Admiralty Court, to administer, with indifference, that justice which the law of nations holds out without distinction to Independent States, some happening to be neutral, and some to be belligerent; to determine the questions brought before him exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden, in the same circumstances, and to impose no duties on Sweden, as a mercantile country, which he would not admit to belong to Great Britain in the same character.” And in the same spirit, Sir James Mackintosh,<sup>1</sup> as Judge of the Admiralty Court at Bombay, expressed his opinion of the duty imposed upon him in that capacity, of regulating his conduct by the known and generally received law of nations, and not to obey any instructions, where they attempted to extend the law of nations injuriously to neutrals.

But whenever such a question is raised before the Court, the presumption is, that any instructions, proceeding from the Government, are in conformity with the precepts of International Law.<sup>2</sup>

The case of the *Fox and others* was that of several American vessels brought in for condemnation, under the Orders of Council of the 26th April, 1809, imposing a blockade on all parts and places under the government of France, and which were issued in retaliation of the violent measures adopted by that government against the commerce of this country. The Court expressed its opinion that, as retaliatory measures, they were strictly conformable to the principles of the law of nations, and that it

<sup>1</sup> *Vide his Life*, lv. 319.

<sup>2</sup> *Edw.* 314.

**Notification.** rested with the Government to declare when such orders should be revoked, in consequence of a change in the conduct of the enemy. Till the State<sup>1</sup> revokes these, the Court is bound to presume that the necessity continues to exist, and to enforce their execution.

In the similar and subsequent case of the *Snipe and others*<sup>2</sup>, the same question came before the Court, and the validity of the Orders in Council was upheld on the same grounds.

When, however, the conformity of the proceedings of the Government to the principles of International Law was not so evident, the Court would hardly consider it consistent with the respect due to its own government to imagine that any conduct repugnant to these principles could be adopted by it, and would rather consider it to be a question for negotiation between the neutral government and that of the captors.

Such would appear to have been the case with the American corn ships in the year 1795.

In the month of April of that year an Order in Council had been issued, directing British cruisers to stop and detain all vessels laden, wholly or in part, with corn, flour, meal, and other articles of provision, and bound to any port in France.

Under this order several seizures of American vessels were made, the legality of which became the subject of discussion before a mixed Commission, and ultimately full indemnification was allowed by the commissioners to the claimants.<sup>3</sup>

**Penalty.**

IT NOW ONLY REMAINS to consider the consequence of carrying contraband.

<sup>1</sup> Courier, Edw. 249.    <sup>2</sup> Edw. p. 381.    <sup>3</sup> Wheaton's Inter. Law, p. 561.

The first is, of course, the confiscation of the article Penalty. itself, of which every case of condemnation affords an example.

By the ancient law of Europe the confiscation was also extended to the vessel, the medium of conveyance, and instrument of offence.<sup>1</sup>

But in the modern practice of the Court of Admiralty a relaxation has been introduced and a milder rule has been adopted. Independent of the forfeiture of the article of contraband, the conveyance of it is, in general, only attended with loss of freight and condemnation in expenses of bringing it in together with the costs of suit.<sup>2</sup>

Where, however, part of the cargo had been restored before the condemnation of the contraband articles, it was considered to have been separated from the ship, and the freight allowed as a charge upon it.<sup>3</sup>

This relaxation, however, is only extended to the property of such parties as may fairly be supposed to be free from all participation in the offence, the known ground on which it was introduced being the supposition that freights of noxious or doubtful articles might be taken without the knowledge of the owner<sup>4</sup>; where, therefore, in the case of the *De Vrow Anna Maria*<sup>5</sup>, the contraband goods were put on board the ship by the consent and privity of the owners, it also was included in the same sentence of condemnation.

And if the ship and contraband articles belong to same owner.

<sup>1</sup> *Ringende Jacob*, 1 Rob. 90.; *Mercurius*, 1 Rob. 288.

<sup>2</sup> *Sarah Christina*, 1 Rob. 242.; *Mercurius*, ed. 288. n.; *Neutralitie*, 3 Rob. 297.

<sup>3</sup> *Oster Risoen*, 4 Rob. 200.

<sup>4</sup> P. 115.; see also *Neutralitie*, 3 Rob. 297.; *Franklin*, 3 Rob. 221. n.

<sup>5</sup> P. 122.



Penalty. the same owner, they will both fall under the same condemnation.<sup>1</sup>

Master part owner. This will also be the case when the master is part owner<sup>2</sup>; and, in general, the owners of the ship are bound by his acts, the master being agent for the ship, though not necessarily for the cargo.<sup>3</sup>

Taint. The taint of contraband also extends to all property on board belonging to the owners of the contraband articles<sup>4</sup>; but all innocent articles belonging to different owners are entitled to restitution.<sup>5</sup>

Male fides. It must also be observed that this relaxation of the penalty is a benefit which can only be claimed in fair cases.<sup>6</sup> Thus, when the vessel was sailing with a false destination<sup>7</sup>, or involved in an act of ill faith<sup>8</sup>, it was condemned.

Removal of Taints. Generally speaking, all taint is removed by the discharge<sup>9</sup> of the cargo, or an abandonment of the design<sup>10</sup>: the penalty will, however, attach to the return voyage, if false papers<sup>11</sup> have been used on the outward one; but it will not be allowed to be enforced when the vessel has in the meantime made an intermediate<sup>12</sup> voyage.

<sup>1</sup> *Jonge Tobias*, 1 Rob. 329.; *Sarah Christina*, 1 Rob. 242.

<sup>2</sup> P. 119. *Carolina*, 6 Rob. 461. *Richmond*, 5 Rob. 338.

<sup>3</sup> *Imina*, 3 Rob. 170. *Atalanta*, 6 Rob. 460.

<sup>4</sup> Pp. 112. 147. 170. *Sarah Christina*, 1 Rob. 242.

<sup>5</sup> *Oster Risoen*, 4 Rob. 199.

<sup>6</sup> *Franklin*, 3 Rob. 223.

<sup>7</sup> *Floreal Commercial*, 3 Rob. 178 *Edward*, 4 Rob. 68.

<sup>8</sup> *Ranger*. 6 Rob. 197.

<sup>9</sup> *Immanuel*, 2 Rob. 195.

<sup>10</sup> *Maria*, 1 Rob. 374.; *Imina*, 3 Rob. 169.

<sup>11</sup> *Rosalie and Betty*, 3 Rob. 343.; affirmed on appeal, 4 Rob. List of Cases. May 6. 1802.

<sup>12</sup> *Christiansberg*, 6 Rob. 381 n.

**LAW**  
**OF**  
**CONTRABAND OF WAR.**



# REPORTS OF CASES

DECIDED IN

## THE HIGH COURT OF ADMIRALTY,

&c. &c. &c.

ANNA GALLEY. CLAAS HARTOG, Master.

ANNA GALLEY, Claas Hartog, Master, a Dutch ship bound from Amsterdam, to Santa Cruz, in Teneriffe; taken

ANNA GALLEY.

1740-1.<sup>1</sup>

Feb. 24.

<sup>1</sup> Pope Gregory XIII. having observed in the year 1582, that the vernal equinox fell, according to the almanacks of that period, on the 10th day of March, but that in the year 325 (that of the Council of Nice), it had fallen on the 21st day of that month, in order to restore it to the latter, its correct date, directed that 10 days should be omitted in the month of October of that year, and provision made to guard against any future irregularities in that respect.

This regulation, which was immediately adopted in the Roman Catholic countries on the Continent, was not introduced into this country until a later period.

Hence arose in the intermediate time, the difference between the Old (o.s.) and the New style (n.s.), the latter being nominally several days in advance of the former, and the date of any event denoted, for example, thus: Dec. 7, 1674, the lower figure representing the date according to the new style.

In the year 1752 it was determined to introduce this alteration into the English Calendar. The difference between the two styles then amounted to 11 days, and it was accordingly enacted by the 24 Geo. II. c. 23., that so many days should be omitted in the month of September, and that the 3rd of that month should be accounted the 14th.

The distinction between the two styles is still retained in Russia, the difference now amounting to 12 days; their 1st of January would be our 13th of that month; and the date of foreign letters or bills is represented thus:—

Jan. 1—13.

Advantage was taken of the same Act of Parliament to remove another anomaly, arising from the use of two different kinds of years,—one the historical year, which began, as at present, on the 1st of January; the other the civil or legal year, which was also that of the Church of England (*vide* Com. Pray., Table of Mov. Feasts,

Contraband vessel seized on suspicion.—Neutral property.—Dutch Treaty, 1674.—Papers opened.—Private interrogatories rejected.—Restitution with expense and damages.

ANNA GALLEY. by the Vernon privateer, Captain Peter Bonnamy, Commander, near the Canaries, and brought to Bristol, supposed to be lawful prize.  
1740-1.  
Feb. 24.

The Master and others were examined there upon interrogatories, by which it does not appear she had any contraband goods on board.

Nor does it appear from the dockets or ship's papers, but, on the contrary, that her cargo was lawful merchandise, belonging to the subjects of the States General.

She had also been appraised and the cargo taken out, but no contraband goods found on board.

Examinations upon interrogatories for the King: —

I. Claas Hartog.

1. Respondent is a native of Holland.

2. That he was taken on 14th Nov. 1740 by the Vernon; took the Vernon to be a Salleeman; the Anna Galley put up Dutch colours and fired one gun.

3. Bonnamy, when he had taken Respondent, showed him his commission.

4. Bonnamy said he took him *because he had cables and anchors on board*, and the crew of the Vernon said the Anna had arms and ammunition on board.

5. Respondent was appointed master by Peter Robyn, merchant of Amsterdam.

*note, edition previous to 1752*), and which commenced on the day of the Annunciation, the 25th day of March.

An event occurring between the 1st of January and the 25th of March, would bear two different dates, according to the year referred to, and might thus be, for example, either Feb. 24. 1740, or Feb. 24. 1741, and was represented thus: —

Feb. 24. 1740-1,  
or Feb. 24. 1741;

the latter or lower figure indicating the year now in use.

By the same Act of Parliament, it was enacted that both years should commence at the same time, viz. the 1st of January. *Vide Grang. Biog. Hist. of England*, xiv.; and *n.*

6. Her crew was twelve men, all Dutchmen taken at Amsterdam. ANNA GALLEY.

7. The galley was Boston built at New England, burthen eighty lasts.

1740-1.  
Feb. 24.

8. The galley was bound from Amsterdam to Santa Cruz, in Teneriff, where he was to receive orders whither to proceed; *knows nothing to the contrary but said ship was proceeding on a lawful trade according to treaties.*

9. *The owners of said ship were Peter Robyn, a Frenchman, and Peter Hooy, a Dutchman, both living in Amsterdam and subjects to the States.*

11. The whole lading was put on board at Amsterdam in September and October 1740. The whole lading was to be delivered at Santa Cruz. The greatest part thereof, as he understood, belonged to *the owners of the said ship, but does not know whether they were really their property or not.* The goods were consigned to the persons mentioned in the bills of lading, but whether they were really designed for them or for what purpose designed, he knows not, *but believes them to be for merchandise.*

12. Does not know how many bills of lading he signed, nor whether those he signed were colourable or not.

13. He has no other instruments in writing to prove the property of the goods save the said bills of lading and the other papers contained in the tin box, which he received from Peter Robyn.

14. He was taken within half a league from the Grand Canaries.

17. Cannot tell what damage he has sustained by the capture of his ship; expects to receive satisfaction for his damage from the Privateer.

18, 19. Respondent received from Peter Robyn, whilst the ship lay in the Texel, a letter to the effect

ANNA GALLEY.  
 1740-1.  
 Feb. 24.

following, viz. : — “ Captain Claas Hartog, 12th October, 1740. Friend, the present serves to accompany the enclosure for Messrs. Slynfert and Decher, of which please to take care, *and in case of any rencontre, not to let it be seen, but to keep it concealed.* I wish you heartily a good voyage, being your affectionate friend, Peter Robyn.” Knows not what became of the letters enclosed in the said letter unless they are in the tin box.

The Anna is qualified to carry twenty guns, but she had but six mounted when the Vernon took her. She had *fourteen muskets* on board, which lay in a chest near the cabin door, and *four or six pistols, four blunderbusses, and about twelve cutlasses, and about three cwt. of gunpowder, all for the said ship's use,* and she had *also forty balls of shot.* On his arrival at Santa Cruz, he was to follow the orders of the Dutch Consul there, to whom the said ship was consigned, but knows nothing of any orders to sell her.

20. He was always on board the Vernon in her passage from the Canaries to Bristol, and there were two Spaniards also on board the Vernon.

## II. Derrick Rabie.

### *Concordat.*

8th Int. The Anna Galley at her setting out carried *cables, anchors, chests of flax, iron bars, iron hoops, and tiles,* which goods were on board at the time of her capture; doth not know whether she had any prohibited goods on board or not.

## III. Daniel William, mate,

### *Concordat.*

8th. Int. Gives the same account of the cargo as Rabie.

*Apprehends the Anna was going on a lawful voyage, and knows of no contraband goods on board her.*

Examination upon interrogatories<sup>1</sup> on behalf of the owners of the Vernon.

ANNA GALLEY.

1740-1.

Feb. 24.

I. Pedro Alvarico, æt. 18.

1. That he is a subject of the king of Spain.

2, 3. Respondent was captain of a brigantine, called the Jesus of Nazareth; departed from Santa Cruz 15th November, 1740, when there were six Spanish men-of-war at anchor at Santa Cruz, and several privateers, &c. *The privateers were waiting for two Dutch ships to arrive from Amsterdam, to bring them a supply of warlike stores of all kinds, as ordnance powder, match, and guns, as well as a supply of naval stores, to enable them to proceed on their intended voyage.* Three days before his departure from Santa Cruz a ship arrived there from Holland, freighted wholly or in part with stores, which ship Respondent saw discharged of a large quantity of cordage of all kinds.

4. Hartog, when on board the Vernon, used to inquire of Respondent if a ship from Holland was not arrived at Santa Cruz before Respondent's departure. Respondent told him there was, *whereupon he and several of his crew then present, expressed themselves to be well pleased at the arrival of their consort, and said they were both on the same account.*

5. A Privateer called the Spinoza awaited at Santa

<sup>1</sup> It does not appear under what circumstances these interrogatories were administered to the witnesses.

The practice in the Prize Court is, on the breaking out of a war, to prepare standing commissions for the examination of witnesses, to which certain interrogatories are annexed; to these the examination is confined. *Vide Mem. Justif. p. 6.*

The answer, if taken, to any other interrogatories, would be immediately rejected by the Court, as was done in this case, p. 16. See also *post*, the Marlborough, p. 31.

Should it be necessary to examine the witnesses to any other point, special application must be made to the Court. *Vide Henrica Jacob*, 1st July, 1806.



ANNA GALLEY.  
 1740-1.  
 Feb. 24.

Cruz for the arrival of two ships from Holland, whereof one was arrived, and the other he believes to be the ship Anna; and that a supply of arms, ammunition, and other warlike stores was expected on the arrival of the said two ships.

II. Juan de Cartro, a Spaniard, agrees *in omnibus* with the last witness.

III. Thomas Wilson,

7. In the voyage to Bristol, *Andrew Peterson*, one of the crew of the Anna Galley, declared to Respondent *there were on board the Anna ten or twelve chests of muskets.*

IV. Edward Teague.

6. After the Anna was taken in returning home, Respondent heard Andrew Peterson, speaking to Thomas Wilson, often use the word "*suapando*<sup>1</sup>," which Respondent afterwards understood to be *muskets*.

7. Respondent asked Wilson what Peterson said to him. *Wilson answered that Peterson said they had ten or twelve chests of muskets on board the Anna*, and well remembers said Peterson said to Wilson *that be very good for you*; and in their return home, Respondent saw a person on board the Vernon, whom he took to be a Dutch merchant, who was walking on the deck; Respondent heard him say, shaking his head, *Damn these English dogs, now they'll have all to themselves.*

V. John Stephens.

6. Respondent heard the mate of the Anna say, that all the goods in the Anna, from *the pump forwards*, were the

<sup>1</sup> Sic in original.

*property of the merchants in Teneriffe, and that the goods, from the pump in the after hold, belonged to the owners of the Anna.*

ANNA GALLEY.  
1740-1.  
Feb. 24.

VI. George Roe

6. Deposits the same as Stephens.

Marine Treaty between England and Holland, 1st December, 1674.<sup>1</sup>

1. Art. The subjects of the one state may freely trade to the enemy of the other.

2. Art. The freedom of navigation shall extend to all commodities, even in time of war, except contraband goods.

3. Art. Only instruments of war are declared to be contraband goods.

4. Art. Ropes, sails, and anchors are expressly declared not to be contraband goods, and all materials for the building or repairing of ships.

6. Art. A ship going into an enemy's port shall show her sea brief and cocquets, that it may appear whether she is laden with any contraband goods.

8. Art. Free ships shall make free goods, except contraband goods.

And by 7. Art., only the contraband goods, not the ship, nor the rest of the goods, shall be confiscated.

By an explanatory Declaration, signed at the Hague, 30th December, 1675<sup>2</sup> :—

It is declared, that ships and vessels belonging to either

<sup>1</sup> *Vide* Dumont, vii. 282. ;      <sup>2</sup> Dumont, *id.*, 319. ; D'Hauterive, *Rec. des Traités*, vii. rive, *id.*, Schöll. v. 232.  
144. Schöll, *Hist. des Traités*, v. 147., n.

ANNA GALLEY.  
 1740-1.  
 Feb. 24.

of the parties may not only pass, traffic, and trade from a neutral port or place to a place in enmity with the other party, or from a place in enmity to a neutral place, but also from a port or place in enmity to a port or place in enmity with the other party.

*Dr. Paul*, for the Privateer's owners.

Letters in a tin box necessary to prove the goods are the property of the Spaniards.

She had contraband goods on board.

By the Act they beg the question, say she is Dutch property, which we deny.

A common motion to desire all papers may be made public.

*Dr. Andrew*, same side.

It will be found that the whole is Spanish property, and part contraband.

The Court cannot proceed till all the papers are examined.

We have great reason to suppose there has been a concealment.

It may appear that cordage and things of that sort were to be delivered to the Spaniards, and that will be contraband, when it is to supply an enemy.

*Dr. Strahan*, for the Dutch owners.

The witnesses prove it is Dutch property.

No foundation for the seizure.

It appears by the appraisement that there were no contraband goods on board.

It is not usual to look into private papers, when there does not appear to be any suspicion of its being an enemy's property.

*Motion for opening and translating letters.*<sup>1</sup>

*Dr. Paul*, for the captors.

ANNA GALLEY.

1740-1.

Feb. 24.

3. Art. Of Instructions to Privateers. All letters to be brought in : if so, they are to be brought in for some purpose; and, therefore, we have a right to have them translated.

Papers, opening and translating.

Seized as being Spanish property.

*Dr. Andrew*, same side.

Those are to be encouraged who prevent any illicit trade to our prejudice.

The Vernon had intelligence that two Dutch vessels were expected by the Spaniards at Santa Crux with stores.

If they were Spanish property, the whole was forfeited ; if any contraband goods on board, those only are forfeited.

The *St. Anthony*, *Michael Sennelt*, *Master*. Seized by Lord Aubrey Beauclerk as prize.

Mr. Sayer, as Proctor, insisted that all the letters should be opened, and the Court ordered it.

The Dutch captain owns he had orders to conceal letters.

Wilful destroying of papers is a just cause of condemnation.

No reason for the opposition unless they knew discoveries would be made against them.

The ordering ship's papers to be destroyed is alone a just cause of seizure.

PER CUR.

The inventory is but now brought in.

<sup>1</sup> *Vide Mem. Justif.*, p. 56.

ANNA GALLEY.

1740-1.

Feb. 24.

It does not appear to the Court what dockets are before the Court.

Nor does it appear that any great inconvenience will arise from opening the letters.

The judge ordered a schedule of the papers, opened and before the Court already, to be laid before him, and said he would not make any order for opening the letters till that was done, and ordered the ship and cargo to be restored upon bail.

(SIR HENRY PENRICE.)

February 24th, 1740-1.

1840-1.

March 3.

March 3rd, 1740-1.

Upon the same motion.

PER CUR.

The use in bringing in papers according to the instructions is, that both the captors and claimers may use them.

Examinations *in preparatorio* are not evidence upon a claim of property.

The Anna Galley is brought in as prize, and has been appraised.

I have looked into the abstract of the papers that were found on board. And from them it seems to be Dutch property. But it is not certain evidence that it is Dutch property, for it is asserted that it is only a colourable trade, and that it is Spanish property.

No instance has been given where the Court has refused any papers to be opened, when there has been any probability of the proceedings being colourable.

All clandestine trade ought to be discouraged.

The Court ought to have certainty that it is not Spanish property.

In the *St. Anthony* there were two masters on board.

Suspicious papers ordered to be looked into, because it was the practice of the Court of Admiralty; but all those papers were open when he was taken, and the ship was restored as English property. — Decreed, the sealed papers to be opened, translated, and inspected in this case of the Anna Galley.

ANNA GALLEY.  
1741.  
March 3.

And decreed all the unnecessary papers to be delivered out with the ship to the claimers.

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THE OWNERS OF THE ANNA GALLEY,  
Claas Hartog, Master,  
*against*  
PETER BONNAMY,  
Commander of the Vernon Privateer.

Allegation for the Owners of the Anna Galley, pleading their claim.

1741.  
June 22.  
Allegation  
pleading claim.

1. Sets forth the names of the several owners of the ship Anna Galley, that they are inhabitants of Amsterdam and subjects of the States General.

2. On 5th September, 1740, n. s. Pieter Robyn, one of the now-owners, purchased the ship Anna Galley (then the Industry), with her appurtenances, of William van Maurich, of Amsterdam, Merchant, who assigned the same to the said Robyn.

3. Exhibits the act of assignment of said ship from Van Maurich to Robyn, marked A., and alleges the identity of the ship, and that upon the purchase he immediately changed her name from the Industry to the Anna Galley.

4. Immediately after, Robyn sold shares in the said ship to the several persons who now claim her, each of which

ANNA GALLEY.  
1741.  
June 22.

have an eighth part; pleads that they were the owners at the time of seizure by the Vernon privateer, and that they are all Inhabitants of Amsterdam and Subjects of the States General.

5. Exhibits an authentic certificate of the register of Captain Claas Hartog, Master of the said Anna Galley, exhibited in the Court of Admiralty at Amsterdam, and an authentic copy of the list of the owners of the said ship purporting that they are inhabitants of Amsterdam thereto annexed, marked B.

2. Alleges identities of ship and persons.

6. After the premises, the said ship took in, at Amsterdam, a lading consisting of anchors, cables, chests, &c., on the account and risk of the said Peter Robyn and Company, owners of said ship, and also upon the account and risk of Peter Duyts, Widow Vander Bock, Gerrant la Lauze, and Hobbe Strandwick, Inhabitants of Amsterdam and Subjects of the States, and upon the risk of no other persons whatsoever, and no other goods whatsoever; the said ship being consigned therewith for Santa Crux, in Teneriffe, and the Canary Islands, and from thence to proceed where the owners should order. The said ship *on 14th October, 1740, N. S.*, set sail from Amsterdam on such intended voyage, and *on 14th November, 1740, N. S.*, as the said ship was under the Great Canaries, in prosecution of her intended voyage, she was, with her lading, unjustly taken by Bonnamy, Commander of the Vernon privateer; and though Hartog, the master of the said ship, told Bonnamy that the said ship and lading wholly belonged to the Subjects of the States, and at the same time *showed him his particular of his cargo, whereby* it appeared that there were no contraband goods on board, the said Bonnamy refused to release the said ship, but declared her a prize, and about 16th December, 1740,

brought her to Bristol; and alleges that no Spaniard or enemy of Great Britain had any share in the said ship or lading.

ANNA GALLEY.  
1741.  
June 22.

7. Exhibits a protest made by Hartog at Bristol, 29th December, 1740, before William Scammell, N. P., marked C.

8. The said ship and lading have been by commission from this Court inventorised<sup>1</sup> and appraised, and no contraband goods whatsoever were found on board her.

9. Sets forth what goods the said ship took on board at Amsterdam for the risk of Peter Robyn and Company, with their marks, and alleges that they are Subjects of the States General.

10. Sets forth what goods she took on board for the sole risk of the said Peter Robyn, with their marks, which were on board at the time of seizure.

11. Sets forth what goods she took on board for the sole risk of Peter Boscher, with their marks, alleges him to be a Subject of the States.

12. Sets forth what goods for the sole risk of Gerritt Blaauw.

13. Sets forth what goods for the sole risk of Moses de Chavea.

14. Sets forth what goods for the sole risk of Peter Duyts.

15. Sets forth what goods for the sole risk of the Widow Vander Bock.

16. Sets forth what goods for the sole risk of Gerrant la Lauze.

17. Sets forth what goods for the sole risk of Hobbe Strandwick.

<sup>1</sup> *Vide Story's Practice*, p. 86, 7.; *Mem. Justif.*, p. 64.



ANNA GALLEY.

1741.

June 22.

N.B. All these articles relating to the lading, plead that the respective goods were on board at the time of the seizure, and that the respective Owners are Subjects of the States General.

18. The said ship proceeded on her said intended voyage from Amsterdam to Teneriffe, on or about 3rd October, 1740, o. s. ; when near the Canary Islands was seized by the Vernon privateer, on or about 3rd November, 1740, o. s., and was brought into Bristol 16th December, 1740, and was afterwards released upon bail given by the owners of said ship and goods, and could not afterwards proceed on her said intended voyage till on or *about 17th March*, 1740, and not before.

19. The said ship, at the time she first proceeded on her said intended voyage from Amsterdam, was completely fitted out, and was about 160 tons, and worth 815*l.*, and took in a sufficient quantity of provisions for her intended voyage to the value of 126*l.* 6*s.* 3*d.*, and had a sufficient complement of men on board — viz., a Master and eleven men, at the wages of 21*l.* 16*s.* 4*d.* a month ; and by reason of the said pretended seizure and detaining as aforesaid, the owners of said ship have sustained considerable damage, and as particularly specified in the schedule hereunto annexed, marked D., to which proponent refers.

20. Prays that it may be pronounced that the Bail given on behalf of the said Peter Robyn and Company, as Owners of the said ship the Anna Galley, and the said Peter Robyn and Company, and others, as Owners of the said goods laden therein, to answer the value of the said ship and goods, may be released and discharged ; and that it may be pronounced for the damage and injury done to or sustained by the said Peter Robyn and Company, Owners of the said ship, and the said Peter Robyn and others, Owners of the lading

on board, by reason of her pretended seizure and detaining as prize by Peter Bonnamy, commander of the said Vernon privateer; and that the said Peter Bonnamy may be condemned therein, and in costs of suit made or to be made on the part and behalf of the said Peter Robyn and Company, and others, Owners of the said ship Anna Galley and her lading; and being so condemned, that the said Peter Bonnamy and the sureties bound for him upon his obtaining a commission or letter of marque to take the ships, vessels, and goods belonging to Spain, or the vassals and subjects of the king of Spain, may be compelled to the payment thereof by you and your definitive sentence, &c.

ANNA GALLEY.  
1741.  
June 22.

*Dr. Paul*, for Bonnamy.

Anna Galley, taken in fight, 14th Nov. 1740, by Bonnamy.

Anchors and cordage aboard the Anna.

Part of the allegation is to claim damage.

That cannot be received till after she is judged not to be prize.

Are willing what relates to the property should be received.

*Dr. Andrew*, same side.

The Act of Parliament<sup>1</sup> directs, that if no claim be made, the Court is to proceed upon the preparatory examination; if claim is made, are to give security for double costs, and then to proceed upon ship's papers and examinations *in preparatorio*; and if doubtful, then to proceed to further examinations.

The captors cannot plead anything, because they are strangers to the right of the claimers.

Possibly it may appear to be Dutch property upon the

<sup>1</sup> Stat. 13. Geo. 2. c. 4.

ANNA GALLEY. preparatory examinations: Cause for damage is distinct  
 from cause of prize.  
 1741.  
 June 22. They have given no bail for double costa.

*Dr. Strahan*, for the Dutch Owners.

Where there is a claim, if it be denied it must be proved.

*Catherine, Brigantine*, allegation containing damage joined with the claim was this term admitted.

N.B. In this case the Court ordered the examinations *in preparatorio* to be read before our allegation was debated, to see whether it was necessary for the claimants to plead.

Question arose, whether witnesses examined upon private<sup>1</sup> interrogatories *in preparatorio* put by the captors could be read.

PER CUR.

I think I have gone farther than usual in suffering any of the examinations *in preparatorio* to be read, but I cannot admit witnesses to be read upon private interrogatories; it is contrary to the practice of the Court: and therefore would not suffer them to be read.

*Dr. Paul*, for Bonnamy, against the allegation.

1. 2. 3. Articles not opposed.

4. Necessary to set forth assignment from Robyn to the other owners.

5. Is only an order for obtaining an Algerine pass.

6. Should set forth to whom consigned at Teneriff; should lay the particulars contained in the whole cargo.

7. The protest cannot be evidence.

<sup>1</sup> *Vide ante*, p. 5., n.

8. Should lay no other goods were on board but what were inventorised. ANNA GALLEY.

9, 10. Should specify who the particular proprietors of the anchors are.

1741.  
June 22.

From 11. to 17. not necessary to be so particular.

18. Is the same as 6.

19. Lays damage; cannot be received till it appears damage has been done.

In damage causes the liquidation is deferred till damage is pronounced for.

*Dr. Andrew*, same side.

4 Art. Exhibits only a pass.

Must show how the other owners came to their shares.

Treaty, 1674<sup>1</sup>, shall produce sea brief: settled what it is to contain.

6. Must set forth to whom consigned: must exhibit the bills of lading.

Instructions must be exhibited: they must exhibit the manifest or refer.

7. Protest cannot be evidenced.

8. Must lay there were no other goods on board when taken but what are inventorised.

9. Must exhibit some written evidence to show the property the same.

The same to all the other articles which plead the property.

18. Not opposed.

19. Lays damage: cannot be yet received. There must be a particular process against the bail, upon a new cause for damage, to show cause why the bail should not be declared forfeited.

<sup>1</sup> *Vide ante*, p. 7.

ANNA GALLEY.

1741-2.

June 22.

N.B. *A monition goes against the bail in the Admiralty, and they are not called to show cause.*

The several particulars of the damage are not set forth.

PER CUR.

The privateers have full instructions how to act.

If he has acted contrary to them, he will be liable to damage.

A protest by the captain taken is always received as evidence and part of the proceedings.

There is a schedule before the Court of the ship's papers that have been delivered out.

19 art. The damage is an incident to the prize, and is like a cause for damage upon collision, which is brought in the instance cause.

In civil causes for damage the liquidation is deferred till it appear whether the damage is done; but there damage or not is the point in issue.

Here it is only a consequence of the principal cause, and laying it now does expedite the cause.

The Court admitted the whole allegation as laid.

(SIR HENRY PENRICE.)

June 22. 1741.

1741-2.

Feb. 15.

Damages. —  
Proof.

ANNA GALLEY, taken as prize by the Vernon  
Privateer.

For the Claimers.

The Anna Galley proceeded from Amsterdam to Teneriffe, on or about 3rd October, 1740, o. s. Taken by the Vernon privateer on or about 3rd November, 1740, o. s., near the Canaries.

Brought into Bristol on 16th December, 1740.  
Released on bail 17th March, 1740.  
Was appraised and her cargo taken out.  
No contraband goods found on board.

ANNA GALLEY.  
1741-2.  
Feb. 15.

Claimed by Claas Hastog, the Master, for Peter Robyn and Company, Owners of the ship.

And for the said Robyn and others, Owners of the cargo.  
Burthen about 160 tons.

Had the Master and eleven men on board.

Sustained damage by the seizure to the amount of 728*l.* 6*s.* 11¼*d.*

Bonnamy, the captain of the privateer, gives no further opposition.

It is fully proved that the ship and cargo is Dutch property, and the damage by the seizure is also fully proved.

*Witnesses for the claimers.*

I. Michael Merlan

Proves Robyn bought the ship at a public sale, and afterwards divided her into shares.

And that the ship and cargo wholly belong to Dutch owners.

Believes the damage sustained amounts to 728*l.* 6*s.* 11*d.*

II. Peter Charle

Proves the same.

III. John van Russen

Proves that Peter Robyn bought the ship at a public sale on 5th September, 1740, for 8500 guilders.<sup>1</sup>

<sup>1</sup> A Dutch florin or gilder is worth about 1*s.* 8*d.*

ANNA GALLEY.

1741-2.

Feb. 15.

## IV. Roger van der Swet

Proves the same, and that the name of the ship was the Industry, but Robyn changed it to the Anna Galley.

## V. Peter van Berendrogt

Proves the same.

## VI. William van Maurich

The same.

## VII. Lucas van Hoom

Proves Robyn purchased the ship at a public sale and divided it into shares, and all the owners are Dutchmen.

Proves the cargo to belong to Dutch owners.

Considerable damage sustained by the seizure: can't say how much.

## VIII. Captain Claas Hastog

Proves the property of the ship to be in Dutchmen.

Proves exhibits A. and B.

That the cargo belongs to Dutchmen.

That he was taken by Bonnamy near the Canary Islands, and then told Bonnamy that the ship and cargo were wholly Dutch property, and showed him the manifest of the lading, by which it appeared there were no contraband goods on board.

The ship was inspected and no contraband goods found on board.

Proves Schedule D., and that the owners have sustained damage to the sum therein contained.

Proves the several articles of said damage as mentioned in said schedule, except the sum of 7*l.* 3*s.* 0*d.*, which is to be deducted as not belonging to the damage.

*Interrogatories.*

4. 6. He had no contraband goods at the time he was taken. Besides the Algerine pass from the Admiralty of Holland, he had on board the ship's register, and showed them to Bonnamy when he came first on board.

ANNA GALLEY.  
1741-2.  
Feb. 15.

Witnesses examined by commission in England as to the damage.

1. William Scammell

Proves the protest marked C.

II. Thomas Demmett

Received for meat and drink for eleven mariners for ten weeks, and for diet for the master for two weeks and two days, 33*l.* 13*s.* 8*d.*

III. Ann Henley

Received for the coopers' work for the ship's use 6*l.* 15*s.* 4*d.*

IV. John Beaton

Received for one new sail and for repairing the old ones 14*l.*

V. David Campbell

Received for lodgings and board for the master 4*l.*

VI. Charles Harford

Received for firewood for the ship's use 2*l.* 8*s.*

VII. Charles Willis

Received for beer for the ship's use 10*l.* 5*s.*



ANNA GALLERY.  
1741-2.  
Feb. 15.

VIII. Morgan Phillips

Received for cheese for the ship's use 4*l.* 7*s.*

IX. John Hall

Received for pickles for the ship's stores 18*s.* 3*d.*

X. Thomas Ralph

Received for amending some of the blocks and other work done to the ship 1*l.* 6*s.* 6*d.*

XI. Anthony Whitebeard

Received for salt for the ship's use 1*l.* 4*s.*

XII. Hannah James

Received for butter for the ship's use 11*l.* 4*s.*

XIII. William Wansey

Received for ropes and other things for the ship's use 5*l.* 11*s.* 6*d.*

XIV. Stephen Perry

Received for mending an anchor and other things belonging to the ship 4*l.*

XV. William Webb

Received for the Ship Carpenter's work done to the ship 13*l.* 12*s.* 2*d.*

XVI. Jenevarah Thompson

Received for 273 stock fish for the ship's use 3*l.* 15*s.*

XVII. Thomas Mayes

For a lanthorn for the ship's use 12*s.*

**XVIII. William Edwards**

Received for cordial waters for the ship's use 2*l.* 9*s.*

ANNA GALLEY.  
1741-2.  
Feb. 15.

**XIX. James Pidding**

Received for biscuit and other things for the use of the ship 7*l.*

**XX. Elisha Hellier**

Received for oil, candles, and other things for the ship's use 7*l.* 18*s.*

**XXI. Joseph Iles**

Received for charges, expenses, and commission as agent for the owners of the ship at Bristol 46*l.* 4*s.*

**XXII. Richard Jolleff**

Received for butcher's meat for the ship's use 12*l.* 7*s.*

N.B. All the above sums were paid for the ship's use while she lay at Bristol.

Claas Hastog also proves the following sums :—

Wear and tear of the ship at 17*l.* per cent. per annum, 63*l.* 10*s.*

For two-thirds of the ship's provisions consumed, 84*l.* 4*s.* 2*d.*

For the Master and eleven men's wages at 21*l.* 16*s.* 4*d.* per month, 119*l.* 5*s.* 3½*d.*

Paid by Mr. Iles at Bristol for lodging and provisions for eleven men of the ship's crew 33*l.*

For the lodging and board of the master and for repairs, postage and other necessaries for the use of the ship and crew, 159*l.* 17*s.*

**ANNA GALLEY.** The above sums of 33*l.* and 159*l.* 17*s.* are also proved  
 1741-2. by the preceding witnesses.  
 Feb. 15.

The Court pronounced that the ship was unduly seized by Bonnamy, and condemned him in expenses and in the damage proved, viz., 722*l.* and upward.

(SIR HENRY PENRICE.)

February 15. 1741-2.

### THE MARLBOROUGH PRIZE.

The  
 MARLBOROUGH.  
 1741.  
 Dec. 8.  
 Contraband  
 warlike stores,  
 part of cargo  
 unclaimed. —  
 Treaty of  
 Utrecht. —  
 Dutch Treaty,  
 1667-8. — Vi-  
 cinity of port.  
 — Private in-  
 terrogatories.  
 — Condemned,  
 just cause of  
 seizure.

The Marlborough, of Laffote en Re, Peter Hovin, Master, was taken by Captain William Bladwell, commander of his Majesty's Snow the Swift, and brought to Dover.

The master and others have been examined on interrogatories.

She appears to be a French ship, bound from Amsterdam to Bayonne in France; her cargo consists of various kinds of goods, and of some guns and warlike stores.

Most of the cargo is claimed, but the guns and some part of the goods, &c., are not. However, it does not appear from the crew, or from any of the ship's papers, that the warlike stores were designed for the enemy.

But a witness has been examined on interrogatories, who deposes that Hovin, the Master, told him in London that they were to be carried to St. Sebastian, and that they were Spanish property, and were insured by the Spaniards.

The question will be only as to those goods unclaimed, whether they will be subject to condemnation.

*Witnesses examined upon interrogatories: —*

I. Peter Hovin, examined 18th Sept. 1741.

1. Deponent is a Frenchman by birth, and a subject of the king of France.

2, 3, 4. On 1st September, o.s., about noon, the Marlborough, being under French colours, was seized by Captain William Bladwell, commander of the Swift Snow, and brought to Dover. No resistance was made by the Marlborough.

5. Deponent has been master of the Marlborough four years; was appointed master thereof by his father, Lawrence Hovin, who delivered him the possession of said ship at Lafflote.

6. The crew consisted of five men and a boy besides deponent, all Frenchmen.

7. The Marlborough was built at Bristol, and about thirty years ago was stranded near Lafflote, and was bought by deponent's father, and fitted up, and is of the burthen of about sixty tons; never knew her called by any other name than the Marlborough.

8. In May last, deponent took in at Rochelle, in France, a loading of sugar, linseed, indigo, coffee, and vinegar, which he delivered at Amsterdam the end of June last, and in August following took in there another loading, consisting of 26 *iron guns, carrying each a ball of 6 pounds*, 20 *iron swivel guns*, 32 *bundles of matches*, 400 *small casks of gunpowder, each containing about 20 pounds weight*, 8 *whole barrels of gunpowder*, 2,600 *iron shot, of 6 pounds each*, 1,500 *cross bar shot*, 10 *small cases of merchandise, contents unknown to deponent*, 10 *hogsheads of brimstone, about 700 or 800 weight each*, 10 *large casks*, 5 *packs*, and 1 *chest of dressed flax*, 42 *cases, barrels, and bales of several sorts of merchandise*,

The  
MARLBOROUGH.  
1741.  
Dec. 8.

The  
MARLBOROUGH.  
1741.  
Dec. 8.

but can't set forth the particulars, 53 great and small bales, containing packing canvas and cacao, and several other parcels of goods, all which are contained in his bills of lading, and other papers now produced, with which loading he was bound, and proceeding on a voyage to Bayonne, in France, when she was taken between Dover and Boulogne, in France, with all said loading on board her.

9, 10, 11, 12, 13, 14, 15, 16. The Marlborough at the time she was taken, belonged to Defendant and Peter Daniau of St. Martin's, and no other person whatever. Was delivered to defendant by his father, but he never had any bill of sale made for her. The loading was taken on board on account of several merchants in Holland, as will appear by six bills of lading, now produced, which were all the bills of lading that were signed for his cargo to the best of his knowledge; deponent knows of no bills of lading colourable, or of any other tenor, concerning the goods laden on board his said ship; deponent was bound with his said lading to Bayonne, without being under any charter party, *but was to deliver the same there to the order of the merchants who put the same on board, but to whom, by name, deponent knows not.* As to the bills of lading, invoices, books, and papers, which were on board his ship at the time of her being seized, they are all now shown to deponent, *and he knows of no others, nor has any more in his custody.* During the four years deponent has had said ship, he has traded from Lorraine, in France, with bale goods to St. Sebastian, in Spain, and from thence to Brest with oars, and from thence to Plymouth for fish, and finding none there went to Dartmouth, and there loaded with fish in the year 1740, and went with the same to St. Sebastian, and delivered

the same, and took in there a loading of iron, which he carried to Dunkirk, and delivered there, and from thence went in ballast to Amsterdam, and there took a loading of deal boards and other goods, and went with them to Bourdeaux, in France, and unloaded there, and then took in a loading of wine and other goods for Ollone in France, which he delivered there, and went to Rochelle in ballast; there took in his loading of sugar, and other goods before-mentioned for Amsterdam, as he has before set forth in his answer to the 8th interrogatory.

The  
MARLBOROUGH.  
1741.  
Dec. 8.

## II. John Doucet

Agrees with the other witness; says he knows not that he shall sustain any damage by the seizure of the ship and lading, except that in case the same shall be condemned, he may be liable to lose his wages, clothes, and bedding; but as to that he knows not.

## III. Simon Bureau

Agrees exactly.

Examined in London, 26th November, 1741.<sup>1</sup>

Francisco Grondona Chamillo, Merchant.

Deponent was born at Lucca, in Italy, and has travelled in several parts of the world within these seven years, and is a subject of the Republic of Lucca; does not know the Marlborough, but knows Peter Hovin, the reputed master of the said ship: became acquainted with him by meeting him on the Royal Exchange, about or more than six weeks ago.

*Interrogatories, 2do loco.*

Ever since his acquaintance with Hovin he has been

<sup>1</sup> *Vide antè*, p. 5., and *post*, p. 31.

The  
MARLBOROUGH.  
1741.  
Dec. 8.

almost daily in his company, at Respondent's house, at coffee-houses, taverns, and other places, and found by his discourse that he was a favourer of the Spaniards, for which reason *Respondent endeavoured to sift him* as much as he could, and found that his ship had been seized as prize by Captain Bladwell, in her passage from Amsterdam, bound (as he declared) to Bayonne, and that they had taken out of her several guns and other warlike stores; and in his discourses with Deponent he gave deponent to understand that, though by his papers it appeared that the said guns and warlike stores were consigned to Bayonne, yet that the same were designed to go from thence to St. Sebastian, and that the freighters who had laden said guns and stores in Holland would not be under any great pain about them, by reason that they belonged to the Spaniards, and that they were insured on account of the Spaniards; and the said Hovin has declared to deponent that he did not value his being met by twenty ships, provided he had not met with the Captain who took him, for that the said goods and stores were at the bottom of his ship hid under other goods, and that the papers were concealed so that they were not easy to be come at, and that somebody had wrote from Holland to England to give information of his having the said guns and stores on board, and that the said guns were put on board in Holland all at once, *whereas he had agreed that they should come on board but a few at a time, to prevent suspicion, or to that effect.*

*Claims.*

I. Claim on oath of Peter Hovin, for the ship as belonging to him and Peter Daniau.

II. Claim on oath of Matthew Servat, of part of the

cargo belonging to Mr. Danjan, another part to Mr. Daniau, another part to Mr. Lambert L'Aisé.

The  
MARLBOROUGH.

1741.

Dec. 8.

III. Claim on oath of Mr. Jean Jacques Beaujon for part of the cargo belonging to Mascar La Croix, to Mr. Danjan, to Jane Coquart, to the widow Vinet, to the widow Beauriau Bellair, and to Le Caen.

IV. Claim on oath of Mr. Isaac Ferrieres, of part of the cargo belonging to Isaac Ferrieres and John Rigail, to John Rigail and Company of Bayonne.

V. Claim on oath of Mr. Joseph Chion for part of the cargo belonging to Mr. John Paez of Rochelle.

N.B. There are several goods besides the warlike stores that are not claimed, which might lawfully have been carried to the enemy.

Act of Court of the 23rd October, 1741.

*Sayer*, Proctor for the claimants, brought in the above claims: alleged the claimers are natives and inhabitants of France, except Isaac Ferrieres and John Rigail, *who are inhabitants of Holland*, and that the ship and goods so seized and now claimed were not liable to seizure, and prays that the ship and goods so seized may be restored to the claimers or to Hovin for their use, and that Captain Bladwell may be condemned in costs and damages, and prays that the ship's papers may be restored, and Hovin allowed to proceed on his voyage to Bayonne.

*Greenly*, for the king, alleged that it appears by Hovin's evidence that he has for four years past traded to St. Sebastian, and that when he was seized he had guns and warlike stores on board.



The  
MARLBOROUGH.  
1741.  
Dec. 8.

That Hovin has not made it appear to whom the said goods were consigned, but has confessed they were intended to be carried to St. Sebastian, and there has been no claim for the said goods or any part thereof.

*Prays that the said guns and all the warlike stores which were on board the said ship when she was seized, and which have not been claimed, may be condemned as lawful prize ; and that the Judge will pronounce there was just cause of seizure of said ship and all the goods on board her, and that the claimants may be ordered to pay the expenses concerning the same, before they have restitution of the said ship and goods claimed by them.*

*Sayer alleged that the said ship was bound to Bayonne in France, and that the warlike stores were consigned to French merchants at Bayonne, and no ways the property of or designed for the enemy, and therefore not subject to condemnation.*

That there is no proof that any of the lading belongs to Spaniards ;

That Hovin has signed bills of lading for all said goods, as master of said ship ; *prays that not only the said ship and the several goods which have been claimed upon oath, but also the said warlike stores, and other goods which are not as yet claimed in due form of law, may also be discharged and restored, together with all the ship's papers, to the said Peter Hovin, for the use of the several persons interested therein.*

N.B. Peter Hovin in his affidavit, dated 21st Oct. 1741,

Swears the ship belongs to him and to Peter Danian only, and that the whole cargo was shipped at Amsterdam, and were designed for France, and were all to be delivered at Bayonne, *and that the same are, as deponent has good reason to believe, the property of French and Dutch*

*merchants, and that they no ways belonged to Spaniards or others living in the dominions of Spain, and that no enemies of Great Britain had or have any right, title, or interest, or property in or to any part of the said goods, wares, merchandizes or cargo.*

The  
MARLBOROUGH.  
1741.  
Dec. 8.

*Treaty of Utrecht*<sup>1</sup>, Art. 17. 19. 20. 22. 26., lawful to carry any goods but warlike stores to the enemy, free ships make free goods, only contraband goods shall be taken out, in all other respects commerce entirely free.

*Treaty between England and Holland*, 17th February, 1667-8<sup>2</sup>, Art. 2, 3, 4. 9. 11., freedom of navigation, contraband goods going to an enemy to be taken out, and the ship to be discharged.

*Stat. 13. Geo. 2. c. 4.*, Admiralty to acquit or condemn according to the evidence from the ship's papers, and the examinations *in preparatorio*.

Objection to reading Francisco Grondona's evidence, because he was not examined on standing interrogatories.<sup>3</sup>

The Court held the objection was good.

But they offering to give in an allegation, and plead the effect of what he was examined to, we gave it up rather than delay the cause, Dec. 8th, 1741.

*Dr. Paul*, for Capt. Bladwell :

No claim for the warlike stores: must, therefore, be condemned as contraband.

PER CUR. :

There was a sufficient time for these warlike stores to be claimed, as well as the rest of the things.

<sup>1</sup> *Vide* Dumont, vol. viii. p. 345.;  
D'Hauterive, vol. ii. p. 45.

<sup>2</sup> *Vide* Dumont, vol. vii. p. 74.;  
D'Hauterive, vol. vii. p. 12.

<sup>3</sup> *Vide ante*, p. 5.

The  
MARLBOROUGH.  
1741.  
Dec. 8.

Hovin's property in the ship is clear.

It does not appear they were carrying to an enemy's port; but there being no claim, it is very suspicious they were designed for the Spaniards, and Grondona swears to Hovin's confession.

I don't apprehend goods have ever been discharged without a claim made.<sup>1</sup>

These goods were very weighty, and could not be taken out at sea; it was necessary, therefore, to bring the ship into port.

Bayonne and St. Sebastian are very near<sup>2</sup>; the stores may very easily be carried from Bayonne thither.

There is great reason to suspect them to be Spanish property; and, being warlike stores, they are liable to seizure and confiscation.

The Court pronounced all the guns, match, powder, balls, shot, &c., to be lawful prize, and that there was just cause of seizure.

(SIR HENRY PENRICE.)

December 8. 1741.

<sup>1</sup> As to neglect in not making claim, and its subsequent admissibility, *vide* Story's Practice, p. 51.; Rob. Coll. Mar., p. 90, n.; *Sir L. Jenkin's Life*, vol. ii. p. 743.

<sup>2</sup> *Vide* the *Zelden Rust*, 6 Rob. 94. *Corunna* and *Ferrol*, situated in the same bay, and not as *Quimper* and *Brest*, separated by projecting headland, held to be identified.

FORTUNE DE LA MER. JOCHEM JESKE, Master.<sup>1</sup>

Fortune de la Mer, Jochem Jeske, Master, taken by the Eagle, John Bazely, Commander, and the Swift, George Hudson, Commander.

I am for the privateers, who examined upon the preparatory interrogatories

Jochem Jeske, the master.

He says he is a Prussian, and lives at Dantzick.

The Fortune de la Mer and her cargo were seized about three miles from shore off Dungeness, at an anchor, 31st Jan. 1744, by the Eagle and Swift privateers, and carried into Dover.

9 mariners on board, all Dantzickers.

The ship was built at Dantzick.

Burden 90 lasts.

Said ship was laden at Dantzick with *oak planks, fir deals, and pipe staves.*

Was bound from thence to Brest, where the voyage was to end.

John Philip Schultz and Gabriel Schultz were the Owners of said ship, who were born and now live at Dantzick.

Mr. Ignace Hyacinth Mathy was the lader or freighter of the cargo at Dantzick, where he now lives, and the said cargo was to be delivered at Brest for his (the freighter's) account, to M. de la Motte, a merchant there.

Johan Booy, mate, deposed the same.

Johan Link, boatswain, deposes the same; says Mathy was the lader or owner of the cargo.

FORTUNE  
DE LA MER.  
1745.  
May 4.

Contraband.—  
Ship timber,  
Dantzic.—Pro-  
duce of neigh-  
bouring coun-  
try. — Equip-  
age.— Declara-  
tion of Crown  
as to Contra-  
band. — Resti-  
tution. — Just  
cause of seizure.

<sup>1</sup> This case was cited in those of the *Apollo*, 4 Rob. 163., and the *Charlotte*, 5 Rob. 31.

FORTUNE  
DE LA MER.  
1745.  
May 4.

*Ship's papers: —*

No. 1. Bill of lading received from Mathy at Dantzic, to be delivered to his order at Brest.

134 pieces of oak timber, 197 oaken planks, 2220 oaken pipe staves, 669 small fir planks.

No. 2. A charter-party at the bottom.

No. 6. A clearance at the toll office in Oresund.

No. 3. A roll of equipage.

No. 4. A pass from the magistrates of Dantzick, for the cargo as being the property of Mathy, a Dantzicker.

No. 5. Ditto for the ship, as being the property of John Philip Schultz, a Dantzicker.

No. 7. A certificate that said ship was built at Dantzick.

6th March, 1744, Jochem Jeske, the master, entered a protest with Abraham Ogier, of London, notary, and set forth that the ship and lading entirely belong to Dantzickers, and protested against the captors, and for all damages and costs.

N.B. It fully appears that the ship and cargo does belong to Dantzickers, but the question is, whether the lading is not timber fitted for building large ships, and as such contraband, and therefore that the ship and cargo are confiscable?

The captors have examined witnesses on interrogatories settled by the advocate of the Admiralty, to prove that the lading is fitted for building large ships.

*Witnesses examined on the said Interrogatories: —*

I. Johan Booy, mate of the Fortune de la Mer.

2. The cargo of the said ship consists of oak planks for deals, *oak wales or bends for ships*, and pipe staves; the oak planks are some of the thickness of 3 inches, and some of 2½ inches, and none thicker; and of the breadth, some

of 12 inches, some of 14 inches, some of 15 inches, and some of 16 inches and none broader, to deponent's knowledge; and of length, from 36 foot to 42 foot, and none longer, to deponent's knowledge. The said planks or any part thereof are not cut out or made fit for any particular purpose. There are no trunnels<sup>1</sup> on board the said ship to deponent's knowledge, except about ten or twelve for the ship's use.

FORTUNE  
DE LA MER.  
1745.  
May 4.

3. The fir deals on board the said ship are of the thickness of 1 inch and not thicker; and of the length, some of 15 foot, some of 12 foot, and some of 10 foot, and not longer; and of the breadth, some of 12 inches and some of 14 inches, and not broader. The fir planks which are generally used for making decks for ships, are of 36 foot and 30 foot in length, and about 1 foot or 8 inches or 9 inches broad, and 2 inches or  $2\frac{1}{2}$  inches thick. The fir deals on board the said ship were not designed, as he verily believes, to be used in building of ships; knows not for what purpose they were intended, and said deals are not adapted for any particular purpose to his knowledge.

4. That wales or bends of ships of war are of the thickness of 14, 15 or 16 inches, and of the like breadth, but knows not of what length they are: verily believes a wale or bond of 8 inch stuff is not fit for large ships of war.

Wales or bends and trunnels are materials ready made, and cut out and fitted for shipping. *There are wales or bends laden on board the said ship ready made, cut out and fitted for shipping, but no trunnels except as aforesaid; and such wales or bends and plank, in the manner they are now made and cut out, can be used for building of ships and also for building of houses.*

<sup>1</sup> Trunnels, wooden pins used in ship building.

FORTUNE  
DE LA MER.  
1745.  
May 4.

II. Eartman Hemke, carpenter of the Fortune de la Mer,

2. Deposes the same, but says the planks were not cut out to his knowledge, *but believes they were intended to be used in building of ships.*

3. Deposes the same; verily believes the fir deals were not designed to be used in building of ships.

4. There are wales or bends on board the said ship fitted for shipping; that such wales or bends and oak plank in the manner they are now cut out can be used for building houses, *which would be using them to great waste; but believes they were designed to be used in building of ships.*

III. Thomas Pascall of Dover, shipwright,

2. The cargo of the said ship consists of oak planks, fir planks, fir deals, oak wales or bends and trunnels; the oak planks are some of 5, some of 4 inches thick, and from 12 to 14 inches broad, and from 30 to 40 foot long, and are fitted for building ships; there are two bundles of trunnels on board, about 50 in each; none of the said trunnels are longer than 2 foot. Trunnels are generally made use of in building ships, and are not generally used for any other purpose. Trunnels used for building large ships are generally 2 foot and some 3 foot long.

3. None of the fir planks in the said ship are thicker than 2 inches, and about 15 or 20 foot long, and 12 inches broad; the fir planks which are generally used for making decks of ships are *from 30 to 40 foot long, and from 9 to 12 inches broad, and from 2 to 3 inches thick*; believes the said fir planks were designed for building ships, and for no other purpose; and are cut out for making deck-planks and for large ships.

4. The wales or bends of ships of war are from 8 or 9 to 4 inches thick, and from 36 to 40 foot long, and from

12 to 14 inches broad ; a wale made of 8-inch stuff is fit for a large ship of war ; that wales and trunnels are materials ready cut out, and made fit for shipping ; there are wales and trunnels on board the said ship fitted for shipping, and the said wales, trunnels, and planks, in the manner they are now cut out, can be used for building houses, which would be great waste ; but Deponent verily believes they were designed for ships.

FORTUNE  
DE LA MER.  
1745.

IV. Franklin Allen of Dover, shipwright,

2. The same.

3. Deposes the same : believes the fir planks were designed to be made use of in building ships, and for no other purpose ; the said planks are not cut out for any particular purpose.

4. Deposes exactly the same as Pascall.

18th February, 1744. Jochem Jeske gave in a claim, with an affidavit, for the ship as the property of John Philip and Gabriel Schultz, merchants at Dantzick, and for the cargo of John Mathy, merchant at Dantzick.

14th March, 1744. He made affidavit that Ignatius Hyacinth Mathy, mentioned in the bill of lading and the preparatory examinations, and John Mathy, mentioned in the claim, is the same person, and that he goes by both names.

*Juffrow Anna, Henry Bose*, a Hamburgh ship laden with lead, bound from Hamburgh to Rouen in France, taken by the Swift.

Ship and cargo condemned to George Hudson, commander of the Swift, 12th November, 1744, as being laden with contraband goods.



FORTUNE  
DE LA MER.  
1745.  
May 4.

*Dr. Paul*, for the claimers.

*La Vierge Marie*.

1st November, 1744, *Postilion of Bourdeaux*.

Timber determined not to be contraband.

*Dr. Edmunds*, same side.

No treaty between Dantzick and us.

*Dr. Simpson*, for the captors.

*La Vierge Marie*<sup>1</sup>, laden with rough timber, and belonged to Russians, held not to be contraband within the treaties with Russia.

*Postilion of Bourdeaux*, shipped so soon after the war that it could not appear they had knowledge of the war when they were laden, and they also were rough timber.

He that supplies an enemy with contraband goods acts as an enemy.

*Zouch's Jus Feciale*, part 2. sect. 8. nu. 13.

*Binkershoek*, the same.

*Dr. Paul*, contra for the claimers.

Goods of neuter states.

No law or treaty makes these goods contraband.

Trunnels on board not worth five shillings.

*Dr. Edmunds*, same side.

Nothing in the present case can forfeit ship or cargo.

She was on a fair trade.

<sup>1</sup> On appeal, 15 July 1745, the ship was restored as Dantzick property, and the cargo condemned as that of Frenchmen. The court did not seem

to have gone into the question of contraband. *Vide post*, pp. 43. & 45.; and also the *Charlotte*, 5 Rob. 311.

All these goods come under the denomination of rough timber.

We have the right of free commerce where no treaty has forbid it.

These are distinct from the things necessary for building ships.

In the *Postilion of Bourdeaux* the ship restored, and primage<sup>1</sup> and freight allowed.

*Binkershoek*, lib. i. c. 10.

*Grotius*, lib. iii. c. 1. § 5.

*Gronov.* notes, *ibid.*

Sword scabbards contraband.

*Instructions* 1693 & 1704, 1706, the same with the present instructions.

PER CUR.:

Agreed the ship and cargo belong to Dantzickers, and was bound to Brest with timber.

Some of the witnesses differ from others as to the dimensions of the planks.

But they agree these planks are much fitter for ship-building than for any other use.

It does not appear certainly that the fir timber was for shipping.

Timber is the product of the country about Dantzick, in which they trade with all nations.

It does not appear the Dantzicker had any ill-intention to supply the enemy; but he meant only to vend his commodity, and they also supply us with the same commodities.

Contraband is of an uncertain signification; but many

FORTUNE  
DE LA MER.

1745.  
March 4.

<sup>1</sup> Primage, an allowance of from 1*d.* to 6*d.* in the lb., or on each packet paid by the shipper or consignee to the mariners and master of a ship for loading the same. *M<sup>c</sup>Culloch's Com. Dict.*

FORTUNE  
DE LA MER.

1745.

March 4.

treaties have expressly declared naval stores not to be contraband.

The Crown may make a declaration what shall be contraband, and then any contravener will be liable to confiscation.<sup>1</sup>

Equipage of a ship means sails, &c., not the hulls.

But the captors had good foundation for the seizure.

The Court pronounced just cause of seizure, and decreed the ship to be restored, and the goods.

May 4. 1745.

(SIR H. PENRICE.)

T'SLOTS  
COPENHAGEN.

1745-6.

Feb. 21.

Contraband. —  
Ship Timber.<sup>a</sup>  
— Affidavit as  
to nature. —  
Commission of  
Inspection. —  
Danish Treaty,  
1670. — Masts.  
— Instructions.  
— Master's  
knowledge of  
nature of cargo.  
— Ship and  
cargo con-  
demned.

T'SLOTS COPENHAGEN. ALBERT DIRKSEN  
KLEYN, Commander.

T'Slots Copenhagen, Albert Dirksen Kleyn, Commander. Taken by the Swift Privateer, George Hudson, Commander, and brought to Sandwich.

I am for the Swift.

18th June, 1745: preparatory examinations were taken at Deal, by which it appears that this ship was taken on 18th June, 1745, about three or four Dutch miles to the eastward of the South Foreland, without resistance. That the ship is the property of Andries Claasen, a Dane by birth, who resides at Elsineur, and was navigated with nine mariners, besides the master, all Danes.

Burthen, 56 Danish lasts.

The ship was bound from Dantzick to St. Maloes, laden with 276 oaken planks, 3 large square oaken beams, 12

<sup>1</sup> Vide Hantefeuille, *Des Nat. de la Mer*, ante, p. 33.; *Endraught*, 1 R. 22.; *Imina*, 3 R. 167.; *Twende Brodre*, 4 Rob. 33.

<sup>a</sup> Cases respecting timber, *Fortune*

*spires of fir timber, for masts or yards, of the length of about 50 or 60 feet, and several sorts of fir planks.*

T<sup>H</sup>SLOTS  
COPENHAGEN.  
1745-6.  
Feb. 21.

That Mr. Jurename is the lader and owner of the said goods, and lives at Dantzick, and that the goods were to be delivered at St. Maloes, on the account of the said Jurename, to whom they did belong.

Was seized, because she was laden with masts and other contraband goods.

*Witnesses examined :*

Albert Dirksen Kleyn, master.

Dirk Hendricks, mate.

Thomas Pietersen Coster, boatswain.

The ship was furnished with the proper documents.

A charter-party, bill of lading.

Certificate of the property of the ship, &c.

2nd August, 1745. Dirksen Kleyn, the master, claimed the ship as being the sole property of Andries Claasen, residing at Elsineur, and a Danish subject, and the cargo as being the sole property of Hendrick Soermans, and Diederick Florus Soermans, merchants, residing at and being subjects of the city of Dantzick.

N.B. It does not appear in the cause that Hendrick Soermans has any interest in the cargo.

But it does appear that the ship is Danish property, and the cargo Dantzick<sup>1</sup> property.

The only question is, whether the timber is not fit for

<sup>1</sup> When Dantzick was a free city, exception was made in favour of exporting the produce of the neighbouring country; *vide Apollo*, 4

Rob. p. 164.; this exception also extended to the Hanse Towns, *Evert*, 4 Rob. 355.

T<sup>S</sup>LOTS  
COPENHAGEN.

1745-6.  
Feb. 21.

masts, and the planks, &c., for building of ships, and as such contraband.

The master, in his affidavit annexed to his claim, swears that his ship is burden 100 tons, and that the largest of the pieces of fir timber is not big enough for a mainmast to his ship, and at most would only be fit for a mizen mast for it; that they may be converted into other uses, and are generally cut into deals, and are seldom made into masts, and are not called masts, either at Dantzick or elsewhere.

19th August, 1745.

Caleb Burton and Joseph Jordan made affidavit that the timber is fit for shipping, that several of the pieces of timber would make a top mast for a 60 gun man of war, and that they must pay duty as much as the largest masts, by reason they are upwards of thirty-six inches in circumference.

20th August.

Joshua Appleton deposed the same, and that they are cut into eight squares, by which they are fit only for masts, and that the other timber is fit for ship-building, and that there must be great loss, if they are employed in other uses.

Peter Jarvis, Samuel Moon, and William Moulden, masters of ships, swear the same, and that if they were intended for deals, they would only be cut into four squares at most.

27th August, 1745.

James Sheppard, mast-maker, affirmed that timbers of the dimensions of these are masts, and being cut eight

square are only fit for that purpose, and are always so esteemed and pay duty as such.

T<sup>r</sup>SLOTS  
COPENHAGEN.

1745-6.

Feb. 21.

6th September, 1745.

Albert Dirksen Kleyn, made affidavit in answer, swears that they are rough round timber, and not cut eight square except within five or six feet at the ground, which is only done for the sake of stowage, and that though it now measures about sixteen inches diameter at the greater end, and about thirteen inches diameter at the lesser end, yet if it was to be cut into masts, they would not be able, on account of the sap part thereof, which must be cut away, to make any other sorts of masts than mizen masts for ships of about 100 tons, and that they are not fitted for masts of any man of war.

*Ship's Papers:—*

No. 6. is a bill of lading of the whole cargo, in which the master acknowledges to have received on board from Diederick Florus Soermans, citizen and inhabitant of Dantzick, and for his account and risk the timber specified, which he promises to deliver at St. Maloes to Madame Brezet, widow of the late Mr. Salobert, deceased, or her factor or assigns.

*Dr. Paul*, for the claimers.

That part which is cut eight square was only for better stowage.

14th December, 1744. *La Vierge Marie*.<sup>1</sup>

Laden with masts, spars, clap board, &c., on board a Dantzick ship, but laden at Riga, and bound for France.

<sup>1</sup> *Vide ante*, p. 38.

T<sup>h</sup>Slots.  
COPENHAGEN.  
1745-6.  
Feb. 21.

This Court ordered her to be dismissed and restored; she was taken by a man of war in Catwater at Plymouth.

The Lords, upon appeal, directed the property should be proved upon supposition the cargo was French property.

*Dr. Simpson*, same side.

The Court at the motion of the claimers decreed a commission of inspection to see what the timber on board is, whether fitted for shipping or not, and ordered the ship to be brought round from Sandwich to Deptford, at the expense and risk of the claimers, and they to give security to the captors in 1000*l*. for securing the ship's safe arrival at Deptford, or to answer her value if lost: did not go into the evidence.

February 8th, 1745-6.

The inspection was waved, and so the cause was heard upon the evidence, as above stated.

*Dr. Paul*, for the claimers.

We waved the inspection, because we must have paid the duties, and the expense would have been more than the cargo was worth.

*Dr. Simpson*, same side.

We insist this is rough timber.

*Dr. Jenner*, for the captors.

Declaration of war prohibits carrying of contraband goods to the enemy.

Every part of this cargo is subject to confiscation.

*Definition of contraband* derived from *Bannum*, which signifies notification or edict.

T<sup>o</sup> SLOTS  
COPENHAGEN.  
Feb. 21.

In the case of the *Vierge Marie*<sup>1</sup>, it was insisted on by the claimers, that the cargo, which belonged to Russians, was not confiscable by the Russian treaty.

Before the Lords a doubt arose upon the property, because consigned to A. B. *or his assigns*, and the Lords did not care to determine the point as to the treaty then, and therefore ordered the claimers to prove their property.

*Zouch's Jus Feciale*, part 2. sect. 8, 9. 13.

If anything contraband is on board a ship, it shall forfeit all, at least, that belongs to the owner of the contraband.

*Loccenius, De Jur. Marit.*, part ii. 351., the same.

*Binkershoeck*, cap. 12., the same.

*Arms of Copenhagen*, 1691, 12th January.

Danish ship laden with deal and planks, bound from Norway to Nantes, condemned as prize generally, but not as goods of enemies.

Affirmed by Lords.

1693. *The Unity*, bound from Christianstadt to Bourdeaux.

Lading deals 11 or 12 feet long, 3500 fir planks 17 or 18 feet long, 72 pieces of oak 8 or 9 feet long.

Ten pieces of round fir timber from 29 to 30 foot long, and pipe staves.

Taken by the Falmouth privateer.

Ship and lading condemned.

Affirmed by the Lords.

This Judgement given upon the nature of the cargo, although none of it in the evidence came under the description in the king's instructions.

<sup>1</sup> *Vide ante*, p. 38.



T'SLOTS  
COPENHAGEN.

1745-6.  
Feb. 21.

*Dr. Paul's* argument for claimers.

The only question whether this cargo is contraband.

*Binkershoek*, cap 9. p. 77.

Contraband are those things *quæ uti sunt bello apta possunt*, all masts not fitting for war, these are only for small ships.

Their witnesses swear they inspected *as near as they could come at them*.

This is not concludent evidence.

The master, who was the loader, swears they are rough timber *cut eight square for stowage*.

Not contradicted.

They have not proved it fit for a man of war upon a full view.

No dispute but those on board the *Vierge Marie*<sup>1</sup> were masts.

C. J. Willes of opinion goods consigned to an enemy to be his, were become his property by the consignment.

No ships carrying timber have been condemned this war.

*Dr. Simpson*, same side.

Immaterial whether these are rough or made up timber, for in either case they are not contraband.

If they had been cut eight square throughout they would have been masts.

The cargo of small value.

Affidavits not strictly legal evidence.

As a Danish ship she has the privilege of carrying the same as the Dutch.

Treaty of 1670 with Denmark, art 40., stipulates the

<sup>1</sup> *Vide ante*, p. 38.

Dane shall have all the privileges which shall be granted to the Dutch, and so may carry naval stores.

The instructions are not notified to allies.

Timber and masts not contraband by Laws of Nations, and therefore not confiscable.

Timber the principal commodities of these countries.

Can't be supposed they would consent to starve themselves.

Suppose saltpetre<sup>1</sup> was the natural commodity of any country.

Laws of Nations to be collected from treaties.

*In all treaties masts declared not to be contraband.*

The Dutch have often declared by special edicts what shall be contraband.

If masts were contraband, it would not affect the rest of the cargo.

Many cases where the ship has been restored, though the cargo was condemned.

Being contraband does not make it forfeitable but by treaties.

The *Vierge Marie* could not be privileged by the treaty, because she was not a Russian ship.

*North Star*, Swedish ship, laden with masts, restored in 1684.

The *Marie*, 1694, Swedish ship, restored, though laden with pitch and tar.

*Dr. Jenner's reply.*

It must be presumed the king's ministers at foreign Courts have notified the king's instructions to the Courts where they reside.

T'SLOTS  
COPENHAGEN.  
1745-6.  
Feb. 21.

<sup>1</sup> *Vide Neptunus*, 6 Rob. 407.

T<sup>S</sup>LOTS  
COPENHAGEN.

1745-6.

Feb. 21.

PER CUR.:

The ship appears to be Danish, the cargo timber.

Insisted that several masts on board large enough for men of war, and therefore contraband.

Does not appear she sailed from a Danish port.

The charter-party is dated at Dantzick, was going to St. Maloes, is a ship trading backwards and forwards to and from France. Carried from France a cargo of wine and brandy, was returning with these timbers, which were not of the growth of Denmark, but were taken in at Dantzick. Indeed, it is not probable that any nations should consent to restrain the sale of their own commodities.

But that is not the present case.

The *Vierge Marie* is before the Lords, and till it is adjudged it is no precedent.

Art 40. of treaty in 1670 with Denmark<sup>1</sup>, relates to duties payable by each nation, but it has never been taken to put them upon the same foot as the Dutch as to the freedom of navigation.

Perhaps it may be rough timber, for it cannot be properly fitted till it is put into the ship.

The witnesses say it is cut eight square, which is the manner of cutting masts.

Naval stores are not *apta bello per se*, but are afterwards to be adapted.

Various distinctions upon these goods which are *promiscui usus*.

It is apparent that this was a cargo fit for shipping, and the masts are big enough for men-of-war.

<sup>1</sup> Vide Dumont, vol. vii. p. 136. *vide Endraught*, 1 Rob. 22.; *Maria*, As to Treaty with Denmark, *id.* 373.; *Twende Brodre*, 4 Rob. and explanatory article of 1780, 314.

I am of opinion the privateer was well justified by the king's instructions to seize this ship and cargo, and it is to be presumed the king's ministers have notified to neutral nations the king's instructions.

T'SLOTS  
COPENHAGEN.  
1745-6.  
Feb. 21.

I am clearly of opinion the cargo is lawful prize: I am not so clear as to the ship; but as she was chartered by the captain, who knew what the cargo was, I think the ship is likewise liable to confiscation.

Pronounced the ship and cargo to be condemned as lawful prize.

February 21st 1745-6.

THE LOUISSA. NILS REINICKE, Master.

The Louissa, Nils Reinicke, Master, taken by the Carlisle Privateer, William Owens, Commander, and brought to Dover.

The LOUISSA.  
1745-6.  
March 4.  
Contraband. —  
Cargo, produce  
of neutral coun-  
try<sup>1</sup>, destination  
discretionary.  
— Swedish  
Treaty, 1661.  
— Passport,  
want of. — Res-  
titution, condi-  
tional to sell in  
Lisbon. — Cer-  
tificate thereof.

I am for the Carlisle.

This ship is burden 50½ Swedish lasts.

Four guns: had on board, besides the master, six mariners and three boys: taken *on the 2nd of September, 1745*, by the Carlisle, about five in the morning under sail, wind at E.S.E., steering south by the wind about one Dutch mile from the French shore by Cape Antifer, and about two or three Swedish miles from Havre de Grace.

<sup>1</sup> As to exemption in favour of native growth or produce; *Vide Stadt Embden*, 1 Rob. 26.; *Ringende Jacob*, *id.* 90.; *Jonge Margareta*, *id.* 193.; *Sarah Christina*, *id.* 238.; *Maria*, *id.* 373.; *Franklin*, 3 Rob.

219.; *Neutraliter*, *id.* 297.; *Twende Brodie*, 4 Rob. 35.; *Apollo*, *id.* 158.; *Christina Maria*, *id.* 166.; *Twée Juffrowen*, *id.* 243.; *Evert*, *id.* 355.; *Charlotte*, 5 Rob. 309.; *Neptunus*, 6 Rob. 407.

The LOUISSA.  
1745-6.  
March 4.

No resistance made.

Mariners all Swedes, and came on board at Calmar except one, who came on board at Elsinour.

The master owner of one-eighth of ship and lading, and about eight or nine barrels of pitch and tar belonged to the crew.

She was bound from Skiaggenas, near Calmar in Sweden, to *Lisbon*<sup>1</sup>, or any port or place in England or France, as the master should think fit to go to if the voyage was likely to prove long.

Her lading was broad paving stones, pitch, tar, and fir planks, and no other sort of goods; at the time she was seized she was proceeding to *Havre de Grace* for a market.

Nils Reinicke the master, Major Henrich Wulflon, and Count Nils Julius Levenhaupt, are the owners of ship and lading, all Swedes.

The lading is about 1500 broad paving stones about two feet square.

Thirty-six barrels of pitch.

Sixty barrels of tar, and fir planks of the thickness of an inch and an inch and a half, and none thicker, and of the length of 14 to 6 feet and none longer, and of the breadth of 8, 9, and 10 inches, and none broader, and 9 or 10 barrels of pitch and tar, which belonged to some of the mariners.

*The said goods were to have been delivered at Havre de Grace for the owners' account, who were also the laders.*

The master swears that the bill of lading (which mentions that the goods are to be delivered at Lisbon) is not colourable.

No charter party.

These facts appear from the deposition of the master Nils Reinicke.

<sup>1</sup> As to discretionary destination; Vide *Twende Brodre*, 4 Rob. 33.

## II. Anders Ries, mate

8th art. Says the ship was bound to Lisbon when she was taken, as he was informed by the owners, and believes to be true, and to no other port or place to his knowledge, and the voyage was to have ended there as he believes.

In all other respects agrees with the master.

The *LOUISSA*.

1745-6.

March 4.

## III. Victor Carl Wulfhlon, passenger.

8th art. Deponent is son to Wulfhlon, one of the owners. Says the ship was bound to Lisbon, as he was informed by his father, and to no other port or place to his knowledge, and the voyage was there to end. She was detained at Ulsund in Norway, by contrary winds; believes she was proceeding to Lisbon, and not to any port in France.

In all other respects agrees with Reinicke.

*Ship's papers: —*

No. 1. Bill of lading dated Calmar, July 30th 1745, signed Nils Reinicke, acknowledges to have received on board, of *Mr. Henry Wulfhlon*, 1536 *pieces of polished Ohland stones*, 36 *barrels of tar*, 36 *barrels of pitch*, 72 *oars*, 96 *pairs of handspikes*, 145½ *dozen of deal boards 7 ells long*, 11 *dozen of 8 ells ditto*, and 2 *small spires*, which he promises to deliver at Lisbon to *Messrs. Arvidson*<sup>1</sup> *Brothers* or order.

No freight for own account.

No. 2. A clearance dated at Stockholm, 12th July 1745, in which the ship is said to belong only to subjects of Sweden, and to be bound to Lisbon.

No. 3. Declaration that the ship appears on the oath of

<sup>1</sup> *Sic* in MSS, but probably should be Arfwedson, the Swedish consul referred to afterwards.

The LOUISSA.  
 1745-6.  
 March 4.

the owners to be Swedish property, which is certified in order to exempt her from toll duties.

Dated at Stockholm, 16th July 1745.

No. 4. A Danish clearing note setting forth that Captain Nils Reinicke, bound from Calmar to Lisbon, then lying at Cronenburg, had paid the toll at the Oresund toll chamber, August 14th 1745.

No. 5. Instructions for Captain Nils Reinicke, July 23rd 1745:

"After he is arrived at Lisbon, which is the place he is designed, with his ship the Louissa, and the cargo disposed of, he must do his best to get there a freight before the winter; but in case he can get no good or advantageous freight, he shall load salt and give me timely information." Gives some further direction, then adds, "as far as the rest I leave to the captain a free management of ship and goods, and that he, in whatever place he may arrive, consult and take the advice of our friends.

(Signed) "For Count Levenhaupt and self,  
 "HENRY WULFHON."

Gives him names of his correspondents in several places.

No. 6. A certificate of the dimensions of the ship.

1st October 1745. Nils Reinicke the master on oath claimed the ship and cargo as being the sole property of himself, and of Nils Levenhaupt, and Henrich Wulfhon, subjects of Sweden, and inhabitants there.

14th October 1745. Nils Reinicke made affidavit that the Louissa at the capture was the property of him and

other Swedish subjects, *and was consigned to Lisbon according to the original bill of lading, where he really intended to have gone when he first sailed from Sweden*; but Deponent had a discretionary power, as is usual for Swedish commanders, to sell the cargo in any place *in France or England* where he could get the best price, in case he should, by contrary winds or otherwise, be delayed in his voyage, so as to render his return impracticable, which every winter is the case in those seas, they being then constantly frozen so as not to admit of navigation. Deponent sailed from Skiaggenas in Sweden, 26th July 1745, O.S. for Calmar, where he arrived the same day, and having got his clearance, sailed from thence 31st July for Lisbon, not then having *any intention to make for any other port*: meeting with bad weather and contrary winds on 12th August, made the port of Ulfsund, where he was forced to stay on account of bad weather and contrary winds till 21st August, and *then sailed for Lisbon*, hoping still to be able to make his voyage in due time: on 30th August was met by an English man-of-war, who examined his papers and then dismissed him; afterwards on said 30th August was met by a French privateer, who detained him till the next morning, and then the said privateer, seeing two sails, left Deponent's ship and chased them, but told Deponent he would come to him again presently. Deponent made sail from the said privateer nearer the shore, in hopes to escape being any longer detained by him: the next day, being the 1st of September, imagining himself to be got quite clear from such privateer, and not far from the port of Havre de Grace, and fearing lest he should be stopped by other privateers, and considering it was so late in the year, that if he met with bad weather or any further hindrance he

The LOUISSA.  
1745-6.  
March 4.



The LOUISA.  
 1745-6.  
 March 4.

should certainly be prevented returning home, *Deponent*<sup>1</sup> *was therefore determined to make for the port of Havre de Grace*, to see if he could get a good market for his lading. The great hindrances *Deponent* had met with as before set forth, and fearing still further, whereby he should be prevented returning home in time, were the only reasons for his making for the port of Havre de Grace; and early in the morning of the day following, being the 2nd of September, he was taken by the Carlisle privateer.

N.B. This ship and cargo plainly appears to be Swedish property.

But she had not a passport according to the Treaty of 1661<sup>2</sup>, had contraband goods on board, and was actually going to an enemy's port; but it is very probable, both from the preparatories, the ship's papers, and the master's affidavit, that she was bound to Lisbon, if she had not been impeded in her voyage by accidents.

The question is, whether, under these particular circumstances the ship and cargo are liable to confiscation.

*Dr. Edmunds*, for the claimers.

Very different from the other cases of Swedish ships, for this was bound to Lisbon.

Discretionary power to go to Lisbon, England, or France.

*Dr. Jenner*, same side.

Forced by the lateness of her voyage to go to Havre de Grace.

<sup>1</sup> Vide *Twende Brodie*, 4 Rob. 33.

<sup>2</sup> Vide *Dumont*, vol. vi. p. 386.; *D'Hauterive*, vol. vii. p. 246, 264.

Ship's papers, instructions to master, and all the proceedings show she was intended for Lisbon.

The LOUISSA.  
1745-6.  
March 4.

We do offer to give bail to deliver this cargo at Lisbon, and to certify of the delivery there.

*Dr. Simpson*, for the captors.

*Dr. Edmunds'* argument for the claimers.

We admit just cause of seizure for want of the Treaty passport.

The consignee is a resident at Lisbon.

The master swears he intended to go to Lisbon.

The quantity of pitch and tar very small.

*Dr. Jenner*, same side.

They did not intend to assist the enemy, but to go to a friend.

Captain, part owner, swears he had a discretionary power what port he would go to if the voyage should prove long.

Went to Havre by the act of God.

Said the clearance is not an oath, never is.

(N.B. *True, but therefore not a material evidence.*)

*The Charles, John Snock*, master, 1691.

Laden with pitch, tar, and planks, taken by the Crown man-of-war.

Ship and cargo discharged on giving security not to sell it in an enemy's port.

*St. Antonio, Gasper Gometz*, master, 1696.

Part of lading contraband, restored, giving bail to deliver cargo at Portugal and to certify.

Did certify and the bail discharged.

The polished stone part of the cargo shows it was rather intended to go to Lisbon than to Havre.

The LOUISSA.  
1745-6.  
March 4.

PER CURIAM:

Cargo consists of various species.

Master, part owner of both ship and cargo.

At the outset the destination of the voyage appears to have been to Lisbon, but with power to sell either at France or England.

The intention was to sell cargo at the best market.

She was drove on the French coast by privateers.

She then designed to go to Havre de Grace, it being too late to go to Lisbon.

No *mala fides* appears, and I must not presume it.

There does not seem to be an intention of aiding the enemy, but an intention only of selling cargo at the best market.

It does not appear that the bills of lading are colourable.

Under the whole circumstances of the case it seems to me he was rather forced into Havre than chose to go thither.

But being found on the French coast there was just cause to seize her, and also because there was not a passport according to the Treaty.

But the cargo appears in its nature to be Swedish.

I must, therefore, decree restitution of the ship and goods upon giving bail to sell the cargo in Lisbon, and to certify of the sale of it there in four months.

Bail for that purpose to be given in 2000*l*., and pronounced just cause of seizure.

March 4th, 1745-6.

Ordered the restitution not to go under seal within fifteen days.

A certificate is now brought in from Arfwed Arfwedson, Swedish consul at Lisbon, in which he certifies that

Reinicke, the master, has desired him to give him a declaration that he has delivered his loading at Lisbon, which the said consul certifies, because he knows for certain that the master has delivered his cargo at Lisbon, took in salt there and sailed from thence 27th May, 1746, bound to St. Ubes. It is dated 30th May, 1746.

The LOUISSA.  
1745-6.  
March 4.

No date when cargo delivered at Lisbon, or to whom, nor is the certificate that any oath has been made of such delivery.

The captors to whom the security was given object to this certificate, and pray the bail may not be discharged.

PER CURIAM:

Plain objections to this certificate, it is only the assertion of the parties concerned.

It is not agreeable to the certificates returned in former cases of this sort.

It should have been certified by the magistrates of Lisbon, or the Custom House officers there.

I direct a new certificate, agreeable to the precedent in former cases, to be brought into the registry by the third Session of next term.

September 6th, 1746.

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ST. NICHOLAS OF GOTTENBURGH.

LARS BORGESON ISBERG, Master.

St. NICHOLAS.  
1745-6.  
March 3.

St. Nicholas of Gottenburgh, Lars Borgeson Isberg, Master. Taken by my client George Hudson, Commander of the Swift Privateer.

St. NICHOLAS.  
1745-6.  
March 3.

This ship was taken on 26th April, 1745, o.s., about two or three leagues from Calais, without resistance and brought to the Downs.

Preparatory examinations were taken at Deal, 29th April, 1745, by which it appears that this ship is burthen twenty-nine and a half Swedish lasts.

Navigated with six mariners, and the master :

Was bound from Gottenburgh to Calais.

Laden with 106 casks of pitch ; 90 casks of tar ; 600 of single deals ; 400 of double deals ; 100 bundles of square steel, weighing about 41 Swedish ship pounds.

That Daniel Witterling, a Swedish subject, was the lader and owner of the said pitch and tar and deals.

And Nicholas Salgren, likewise a Swedish subject, was the lader and owner of the steel :

All which goods were to be delivered at Calais to Mr. Coquant, on the account of said Salgren and Witterling.

And that the ship is the property of Lars Isberg, the Master, the said Daniel Witterling, and Pieter Boystrom, all Swedes residing at Gottenburgh or other places in Sweden.

Lars Isberg, the master.

Borge Pierson, mariner, and Matthias Martson, mariner, are examined.

The ship's papers are fair, but there is no passport according to Treaty.

11th May, 1745, Lars Isberg, the master, claimed the ship as being the sole property of himself, of Daniel Witterling, and Pieter Boystrom ;

And the cargo as being the property of the said Daniel Witterling and Nicholas Salgren, all subjects of Sweden.

ST. NICHOLAS.  
1745 6.  
March 3.

N. B. There is no doubt but that the ship and cargo is Swedish property, but the question is, whether the lading is not contraband, and, as such, confiscable together with the ship.

*Dr. Paul*, for the claimers.

The passport according to the Treaty has not of late been used.

Plank<sup>1</sup> and steel<sup>2</sup> are not enumerated in the instructions as contraband.

Pitch and tar are free, because not expressly prohibited.

*Treaty between Cromwell and the Queen of Sweden in 1654, art. 11.*<sup>3</sup>

*Treaty with Cromwell in 1656.*<sup>4</sup>

1691. *The Charles*, laden with pitch, tar, and deals, cleared from Sweden to Lisbon, but suspected to be bound for France.

Obliged to give security to go to Lisbon.

1691. *The Marie, Olan Nelson* Master, laden with deals, iron, pitch, and tar, bound to Rochelle, taken by the Elizabeth, Swedish ship, restored 16th July.

3rd May, goods condemned.

<sup>1</sup> By compact between Great Britain and Denmark, planks are not contraband; vide *Einigheden*, 1 Rob. 324.

<sup>2</sup> In the case of the *De Hoop*, *Witzes* decided in the High Court of Admiralty, 14 July, 1801, but not reported in Robinson's Reports,

steel, of which a sword had been made, and which was produced under an affidavit in Court, under the circumstances of the case, was pronounced not to be contraband. *Euphemia* Stewart Reports, p. 566.

<sup>3</sup> Vide Dumont, vol. vi. p. 80.

<sup>4</sup> Vide Dumont, vol. vi. p. 125.

ST. NICHOLAS  
 1745-6.  
 March 3.

Appealed, Lords ordered it to be restored, giving security to sell the cargo in England.

1694. *North Star*, Swedish ship contraband cargo.

Ship restored, cargo condemned.

Appealed, Lords ordered cargo to be sold, giving security to sell it in England.

This case differs from the *Med Guds Hielpe*, because the whole cargo was pitch and tar.

In the case of the *Hewa*<sup>1</sup>, a special cause in the charter-party that the freighter should bear the hazard if there were any contraband goods.

*Dr. Edmund*, same side.

If the goods are confiscable, all the cases in former wars show the ship ought not to be condemned nor the rest of the cargo which is not contraband.

The Court condemned the pitch and tar<sup>2</sup>, and assigned to have precedents laid before him the first day of next Term, as to the condemnation of the ship and the rest of the cargo.

March 3rd, 1745-6.

<sup>1</sup> *Vide post*, p. 62.

<sup>2</sup> Pitch and tar, before 1656, doubtful; *Maria*, 1 Rob. 372. In the time of Sir L. Jenkins (1674), not generally esteemed contraband, unless prohibited by special notification, *Twee Juffrowen*, 4 Rob. 243. 1750 In the *Med Guds Hielpe* the

whole cargo, being pitch and tar, was condemned. *Staadts Embden*, 1 Rob. 29.; and see case reported *infra*. Held contraband, *Staadts Embden*, 1 Rob. 30.; *Richmond*, 5 Rob. 328.; was subject to pre-emption, *Maria*, 1 Rob. 373.; by Swedish Treaty, *Neptunus*, 6 Rob. 405.

## LOUISA. PETER SHANDBERG, Master.

Louisa, Peter Shandberg, Master. Taken by the Sutherland Privateer, Capt. John Sutherland, Commander.

The LOUISA.

1745-6.

March 3.

Contraband.—  
Pitch and tar,  
part of cargo,  
condemned.—  
Passport, want  
of.—Effect  
on ship and  
cargo?

This ship was taken about five or six o'clock in the morning of the 10th May, 1745, o.s., about five or six leagues from the shore of Dieppe, and carried into Dover; no resistance made.

The ship was manned with the master, two mariners and one boy, all Swedes.

The ship was bound from Udewalla, near Gottenburg in Sweden, to Havre de Grace in France.

She was laden with 150 barrels of pitch, and three small bundles of four square bars of steel<sup>1</sup>, each bar about 4½ ft. long and 1 in. thick, and weighing about one ship pound.

A claim is entered by the master for the ship and goods, as being the sole property of John Hock of Udewalla, near Gottenburg, a Swedish merchant.

And it appears by the evidence that the ship and cargo does entirely belong to the said John Hock.

The question is only whether she, being laden with pitch, which by the king's instruction is contraband, is not liable to be seized as prize.

*Ship's papers:—*

No. 1. A fair bill of lading.

<sup>1</sup> *Note*, p. 59.



The LOUISA.  
1745-6.  
March 3.

No. 2. A clearance at Udewalla for the cargo, dated 30th April, 1745.

No. 3. A bill of privilege upon oath made that the ship belongs wholly to the said John Hock, dated at Stockholm, 27th July, 1745.

N.B. This bill was granted after the capture.

N.B. There is no passport according to Treaty.

Condemned the pitch and tar<sup>1</sup>, and reserved the consideration of the ship and the rest of the cargo to the first day of Easter Term.

March 3rd, 1745-6.

The HEWA.  
1745-6.  
March 3.

THE HEWA. ANDREAS OLOFFSON, Master.

Contraband.—  
Cargo, pitch,  
tar, deal boards,  
and iron.—  
Swedish treat-  
ties 1654,  
1656, 1661,  
1664.—Pass-  
port, want of.—  
King's instruc-  
tions to priva-  
teers.—Con-  
demned.

The Hewa, Andreas Oloffson, Master, taken by the Swift Privateer, George Hudson, Commander.

I am for the Swift.

Preparatory examinations were taken at Deal on 9th May, 1745.

7th May, 1745. Ship taken and carried into the Downs.

Burden 18 Swedish tons.<sup>2</sup> Had five mariners, including the master.

<sup>1</sup> Note, p. 60.

<sup>2</sup> SWEDISH MONEY, WEIGHTS  
AND MEASURES.  
(Parl. Statist. Tables.)

MONEY:

Rix dollar Banco ...about 1s. 8d.

WEIGHTS AND MEASURES:

Mark .....about 6½ oz.  
Lod, 16 to the mark ...8½ dwts.  
Skålpund { commercial 0·936 lbs. av.  
or Pound { metal .....0·477 "

Lispund of 20 { comm. a. 6 to the ct.  
skålpunds { metal.....7 "  
Sheppund of { comm. ...6 to the ton.  
20 Lispunds { metal ...4½ "  
Sheppund of { raw iron 4 "  
26 Lispunds {  
Ship last .....2 tons.  
Tunna ...from 4 to 4½ imp. bushels.  
Kann..... " 4 " 6 imp. pinta.  
Ell .....about ⅓ of a yard.  
Mile, nearly equal to  
6 miles, 5 furlongs English.

Bound from Gottenburgh to St. Martin's, in France.

Laden with iron, pitch, tar, and deals.

The voyage before she was bound from Gottenburgh to St. Martin's, and back to Gottenburgh, and had at her first setting out on the said voyage a lading of iron and deals.

Casper Wohlfhart and Erick Lidberg are the owners of the ship, both Swedes, born at Gottenburgh, where they now live with their families.

The lading was put on board at Gottenburgh in April, 1745, consists of 85 casks of pitch, 30 barrels of tar, 370 iron bars, and 96 dozen of deals.

David Olberg was the lader and owner of the said goods : he is of the Swedish nation, a Lutheran, and now lives at Gottenburgh. They were to be delivered at St. Martin's upon account of the said Olberg to Christian Craft, there to be sold in order to purchase another cargo for Gottenburgh.

One bill of lading only signed ; that not colourable.

Was taken in middle Channel, between Dover and Calais.

Ship was built at Gottenburgh.

These facts are proved by three of the said ship's crew, who were examined by the captors, viz.—

1. Andreas Oloffson, master.
2. Hans Hekerberg, mariner.
3. Anders Oloffson, mariner.

*Ship's papers : —*

No. 1. A toll brief, dated 3rd April, 1745, *but there is no passport agreeable to the treaty of 1661.*

No. 2. A certificate that the ship is Swedish built, dated 8th July, 1741.

The HEWA

1745-6.

March 3.

The HWA.  
 1745-6.  
 March 3.

No. 3. Charter-party, dated Gottenburgh, 11th February, 1745, signed by Anders Oloffson, the Master, and David Olberts, the freighter, to go to such places in England, or in the bays of France, as the freighter shall think proper, has this clause in it:—"It is further agreed, that no goods which are declared contraband by the powers that are now in war together, shall in any place be shipped on board the said vessel, and in such a case the freighter shall be answerable for the damage."

No. 4. A clearance, in which the cargo is specified, dated at Gottenburgh, April 25th, 1745.

No. 5. Passport from the Swedish admiral, but not pursuant to the treaty.

No. 6. Bill of lading, dated at Gottenburgh, April 29th, 1745, signed Anders Oloffson, by which he acknowledges to have received on board from Mr. David Olberts 370 bars of iron, 85 barrels of crown pitch, 30 barrels of tar, 96 dozen of good 1½-inch fir boards; which he promises to deliver to Mr. Consul Christopher Kraft, at St. Martin's, or to his factor or assigns.

15th May, 1745. Anders Oloffson, the master, on oath gave in a claim for the ship, as being the sole property of Messrs. Casper Wolhfart and Erick Lidberg, and for the cargo, as being the sole property of David Olberg, all Swedish subjects, residing at Gottenburgh.

N.B. It appears fully that the ship and lading are the property of Swedes.

But we insist, the cargo being naval stores on board a Swedish ship, bound to an enemy's port, are contraband; and that therefore the ship and cargo ought to be condemned as lawful prize to the captors.

*Dr. Pinfold*, for the claimers.

Crew consisted of the master and four men.

Question, whether cargo is contraband, being pitch and tar.

The HEWA.

1745-6.

March 3.

*Dr. Edmunds*, same side.

The want of a proper passport only justifies the bringing her in.

*Dr. Jenner*, *contra*, for the captors.

*Loccenius* and *Zouch* both of opinion that contraband shall taint all lawful goods of the same owner.

*Bynkershoek*, cap. 12. the same.

*Dr. Pinfold's* argument for claim.

Single question, whether this cargo is contraband or not.

The iron and the boards are not fit for war, — *uti sunt*.

It was special, *Bynkershoek* says, that the states declared things not *per se* apt for war, to be contraband.

In the *Med Guds Hielpe* the whole cargo was pitch and tar, in this case part only is so.

Vol. ii. p. 751., *Sir Leoline Jenkins' Life*.

Sowton's case.

By the law of nations, pitch and tar, &c. are not contraband.

By the treaty of 1661 these goods are not enumerated;

Are the growth of that country; and therefore cannot be presumed to intend to prohibit their own goods.

By former treaties with Sweden, contraband was left general; and therefore this treaty, which mentions some, must be understood to comprehend all contraband goods.

The King's Instructions cannot alter the treaty.

The HEWΔ.  
 1745-6.  
 March 3.

*Dr. Edmunds*, same side.

Admit this case, as to pitch and tar, was fully considered in the *Med Guds Hjelpe*; where there is a treaty subsisting that must be the rule to judge by, and neither nation can alter it by their instructions.

The condemnation pretended only to be justifiable by the 2nd and 5th articles of the Instructions; this treaty of 1661<sup>1</sup> is best interpreted by the opinions about that time.

21st Oct. 1664<sup>2</sup>, art. 17. explains treaty of 1661, and says all goods are lawful which are not specified in 11th art. of treaty 1661.

#### PER CURIAM :

A small Swedish ship, both lading and ship Swedish property, no pass according to the treaty of 1661.

The question is, whether this lading is contraband, and will make a forfeiture of her and her cargo.

Lading consists of four species — pitch, tar, deal boards, and iron, all laden by Olberg the owner; the captain has made a charter-party, and has secured himself by a clause therein, that if any forfeiture should arise from contraband being put on board, the freighter shall make it good.

The *treaty of 1664*<sup>3</sup> has been made use of to explain that of 1661, but as the treaty of 1664 is not in force, no argument can be drawn from it.

I can only judge on the treaties subsisting, which are my rule.

Pitch and tar<sup>4</sup> absolutely necessary for navigating all ships, and therefore must be deemed contraband.

<sup>1</sup> *Vide Dumont*, vol. vi. p. 384.

<sup>2</sup> *Vide Treaty of 16th Feb. 1666*, article 1. *Vide Dumont*, vol. vi. p. 83. *D'Hauterive*, vol. vii. p. 264—267.

<sup>3</sup> *Vide Treaty of 16th Feb. 1666*. *D'Hauterive*, vol. vii. p. 264—267.

<sup>4</sup> *Vide antè*, note, p. 60.

The privateers must pursue the King's Instructions, and they expressly declare pitch and tar to be contraband.

Goods illicit will taint what is not illicit, but planks and irons<sup>1</sup> are likewise necessary for shipping, and as such are contraband; and on the whole I am of opinion the ship and goods are liable to confiscation.

And by Interlocutory the Judge condemned ship and cargo as lawful prize to the captor.

March 3rd, 1745-6.

The HEWA.

1745-6.

March 3.

### THE JUFFROW SUSANNA.

The Juffrow Susanna. Taken by His Majesty's Sloop the Otter, William Cust, Esq., Commander, and brought to the Downs.

I am for the captors.

This ship is burthen about 100 lasts.

Navigated with 10 men, the master included.

No guns.

Bound from Dantzick to Brest.

Laden with 91 large planks, 208 oaken planks, 380 fir boards, and 5700 pipe staves, which was all her lading.

The ship appears to belong to Dantzickers and the cargo also.

She was seized off of Ostend by the Otter sloop, on 2nd May, 1746, N. S.

The JUFFROW  
SUSANNA.

1746.

June 26.

Contraband.—  
Timber fit for  
ship-building  
condemned.—  
Proof.—Desti-  
nation port of  
naval equip-  
ment.—Pro-  
perty of differ-  
ent owners ex-  
empt.—Freight  
refused.—Just  
cause of seizurc.  
—Expenses of  
captors al-  
lowed.

<sup>1</sup> Iron and planks excepted in 324. *Endraught*, 1 Rob. 23.  
Danish Treaty.—*Einigheden*, 1 Rob. *Twende Brodre*, 4 Rob. 36.

The *JUFFROW*

SUBANNA.

1746.

June 26.

The captors have examined in preparatorio,

1. Huyte Aldertz, the Master.

The ship was bound to Brest from Dantzick, was built at Dantzick.

Her lading Planks, Deal Boards and Pipe Staves.

Lading put on board at Dantzick about Easter last by Mr. Ignatius Mathy, who resides at Dantzick, and who is owner thereof, except the fir, which he believes belongs to another citizen of Dantzick. The property of the ship is in deponent and others, all Dantzickers.

Signed only four bills of lading, all real and true ones.

*On 2nd set of Interrogatories :*

1. That the 91 pieces of timber, 208 oaken planks and the 380 fir boards, mentioned in the bill of lading No. 1, are materials proper for, and may be made use of in, the building of ships.

2. Respondent being no carpenter, cannot say whether or no the said 91 pieces of timber are made fit for whales, bends, or any other part of a ship.

5. Believes two of said 91 pieces of timber are 8 inches thick, and all the rest of them are less ; several of them are much thicker than 5 inches and a half.

II. Joachim Jornes, Mate.

Deposes the same in substance on both sets of interrogatories.

III. Martin Fellix, Boatswain, deposes the same.

*2nd set of Interrogatories :*

1, 2, 3, 4. The 91 pieces of timber, the 208 oaken planks, and 385 fir boards may be made use of as materials in

the building of ships, but they are in planks as they were sawed out, and no way prepared, cut out, or worked up to be immediately applied to the use of bends, whales, or any other sort of ship-building, and Respondent does not know that they were intended for any such use.

The *JUFFROW*  
*SUSANNA.*  
 1746.  
 June 26.

5. Does not know the size or dimensions of any of the said pieces of timber.

Wm. Preston and Isaac Wright, shipwrights, have made affidavits that as they are now cut out they are proper for shipbuilding.

24th May, 1746.

Huyte Aldertz, the master, gave in a claim on oath for the ship and cargo.

Claimed the ship as being the sole property of *himself* and of *Elizabeth Holkrichter Widow, James Dirkson, John Van Hock, and James Bestwader*; all inhabitants and subjects of Dantzick.

Claimed the cargo as being the sole property of Ignatius Hyacinth Mathy and others, inhabitants, burghers, and subjects of Dantzick, and for all damages, demurrage, and expenses.

*Ship's papers:—*

No. 1. A fair bill of lading for the whole cargo, dated at Dantzick, 12th April, 1746.

No. 2. A passport in proper form, by which it appears on oath, that the claimers are owners of the ship, dated at Dantzick, 6th Dec. 1745.

No. 3. A certificate of health and of the crew, dated at Dantzick, 6th Dec. 1745.



The JUFFROW  
SUSANNA.

1746.

June 26.

No. 4. Certificate that Mathy declared on oath, that the cargo is his property, and that he is a citizen and inhabitant of Dantzick, dated at Dantzick, 18th Nov. 1745.

No. 5. A charter-party for this voyage signed by Mathy the freighter and Albertz the master, dated Dantzick, 3rd Nov. 1745.

There is no doubt but that the ship and cargo are the property of Dantzickers; the only question is, whether the cargo is not contraband, and therefore confiscable.

*Dr. Simpson*, for the claimers.

Both ship and goods the property of Dantzickers.

All proper papers on board, charter-party, passports, &c., nothing colourable.

Appears to be bound from Dantzick to Brest; no doubt that she is a Dantzicker; admit the only question is, whether this lading is contraband.

*Fortune de la Mer*, 4th May, 1745.<sup>1</sup>

Taken by the Eagle and Swift.

Laden with timber to be delivered at Brest, 134 oak timbers.

In that case, additional Interrogatories<sup>2</sup> to show the timber was adapted for shipping.

But as it was the product of the country, the Court restored ship and goods.

*Vierge Marie*<sup>3</sup>, a Dantzick ship, 13th Dec. 1744, taken by the Baltimore sloop, Captain Cleland, laden with masts, spars, &c., restored.

Appealed to the Lords.

Insisted they were contraband.

<sup>1</sup> *Vide antè*, p. 33.

<sup>2</sup> *Vide antè*, p. 34.

<sup>3</sup> *Vide antè*, p. 38.

The Lords did not declare them to be so, but directed the property to be proved, which they could not have done if they had thought the lading contraband.

The JUFFROW  
SUBANNA.  
1746.  
June 26.

*Dr. Jenner*, same side.

Ship built at Dantzic, has always belonged to Dantzickers. There have been but four cases of this sort since this war.

*Vierge Marie*<sup>1</sup>, *Postilion of Bourdeaux*<sup>2</sup>, 1 Nov. 1744.

*Fortune de la Mer*<sup>3</sup>, *T'slots Copenhagen*.<sup>4</sup>

*Dr. Paul*, for the captors.

*Bynkershoek*<sup>5</sup>, c. 10.

Said this timber is not fitted for shipping.

*Bynkershoek*<sup>6</sup>, p. 81. Saltpetre in itself not useful in war, but it makes gunpowder, and therefore contraband.

12 Nov. 1744. Ninety-five pigs of lead condemned in themselves; those pigs not *apta bello per se*.

1693. *Vine Grape of Riga, John Asmus, Master*, 90 tons; taken by a privateer, bound from Riga to France.

Laden with clapboards, hogsheads' staves, and tar, condemned as enemies' goods.

1694. *North Star*, 130 lasts.

Lading—deal clapboards, pipe staves; taken by man of war. Cargo condemned 26th July, 1694.

1705. *The Charles*.

Lading—planks, pitch, and tar. Ship restored, cargo condemned.

Commissioners of Prizes reported that planks, canvas, pitch, tar, and masts are contraband.

<sup>1</sup> *Vide antè*, p. 38.

<sup>2</sup> *Vide antè*, p. 38.

<sup>3</sup> *Vide antè*, p. 33.

<sup>4</sup> *Vide antè*, p. 40.

<sup>5</sup> *Vide Bynk. Quest. Jur. Pub.*

lib. i. c. 10. p. 75.

<sup>6</sup> *Id.* p. 81.

The JUFFROW  
SUSANNA.

1746.

June 26.

*The Postilion, of Bourdeaux*<sup>1</sup>, restored, because laden before the war.

*Dr. Simpson, contrà*, for the claimers.

This cargo is the produce of Dantzic. Absurd to suppose that they would consent to starve themselves, as they must do, if they cannot trade with these sort of goods.

Instructions are not a public notification.

Bynkershoek says, these goods have been declared to be contraband by public edicts; *ergo*, without, they would not be so.

*The North Star*, the Lords reversed the condemnation, and restored the cargo.

*T'slots Copenhagen*, condemned because she had masts on board, and that was sufficient to condemn ships and cargo.

For any contraband goods are grounds sufficient to confiscate every part.

The Court, in many instances, has obliged the claimers to sell their goods, which shows they are not confiscable because contraband, unless treaties have made them so.

N.B. *Ergo, Nothing contraband by Law of Nations.*

If the Court can believe the Dantzickers acted with an evil intention, there may be reason to condemn.

*Dr. Jenner, same side.*

This cargo not contraband by Law of Nations nor by any declaration of the Crown. Contraband is only what is *contra bannum principis*.

These are not mentioned in the instructions.

All the cases where ships have been condemned this war

<sup>1</sup> *Vide antè*, p. 38.

for having contraband, have had some goods expressly mentioned in the instructions.

The JUFFROW  
SUBANNA.

There is no part of this cargo but what is *promiscui usus*.

1746.  
June 26.

*T'slots Copenhagen*, condemned because she had masts.

According to their doctrine, there would be no bounds to contraband.

PER CURIAM :

*Postilion of Bourdeaux*<sup>1</sup>, laden at Riga immediately after the war; the goods condemned, but the ship restored, because the goods were French; and the ship restored, because the owners could not know of the war.

*T'slots Copenhagen*<sup>2</sup>, condemned, because she was in a course of carrying naval stores to France, in return for French goods, and therefore the naval stores were, in some sort, French.

*Vierge Marie*<sup>3</sup>, seized at Plymouth, laden at Riga; determined here, upon the Russian treaty, that she should be restored, and it is now depending.

*The Hewa*<sup>4</sup> was a Swedish ship, had pitch and tar on board, which are mentioned in the instructions, and therefore was condemned.

*Fortune de la Mer*<sup>5</sup>: the timber was small, none above three inches thick; cargo consisted of various sorts of timber; some might be fit for shipping, others were not, and therefore was restored; but the Court was then so doubtful as to pronounce just cause of seizure, and gave costs to the captors.

In this case, the cargo was put on board by charter-

<sup>1</sup> *Vide antè*, p. 38.

<sup>2</sup> *Vide antè*, p. 40.

<sup>3</sup> *Vide antè*, p. 38.

<sup>4</sup> *Vide antè*, p. 62.

<sup>5</sup> *Vide antè*, p. 33.

The *JUFFROW*  
*SUSANNA.*

1746.  
 June 26.

party, which does not mention to whom it is to be delivered.

The planks are large and thick, fitted for shipping; was going to Brest<sup>1</sup>, where men-of-war only are built and fitted, and timber carried there must be for fitting men-of-war.

The dimensions of this timber is much larger than in the *Fortune de la Mer*.

The two shipwrights who have examined these timbers swear they are fit for men-of-war.

Mathy having had good fortune in the case of the *Fortune de la Mer*, has extended his commerce, and now is supplying the enemy with the materials for their men-of-war.

I think he is aiding our enemies, contrary to the Laws of Nations, which prohibits a neuter from aiding one state against another at war. I, therefore, am of opinion, part of this cargo is fit for men-of-war, and, as such, contraband, and is liable to confiscation; and I decree that the ninety-one planks, &c., shall be condemned; but I restore the pipe staves and the ship, because she does not belong to the same owners<sup>2</sup> as the cargo belongs to; and I am of opinion the ship is entitled to no freight for the goods; and I pronounce there is just cause of seizure, and I decree expenses to the captors.

June 26th, 1746.

Several other men-of-war claimed to be joint captors, and appearances were given for them.

<sup>1</sup> As to destination, port of naval equipment, vide *Jonge Margareta*, 1 Rob. 195. 192.; *Endraught*, 1 Rob. 25.; *Magnus*, 1 Rob. 31.

<sup>2</sup> Innocent part of cargo belong-

ing to other owners not infected. *Staadts Embden*, 1 Rob. 31.; *Mercurius*, 1 Rob. 86.; Bynk. Quest. J. P. lib. i. c. 12. p. 93.

THE PROVIDENCE, OF BOSTON. ROBERT  
SINCLAIR, Master.

The Providence, of Boston, Robert Sinclair, Master;  
taken by the Sheerness man-of-war, Lucius O'Brien, Esq.,  
Commander, and brought into the River Thames.

I am for the Providence.

The captors pray the ship and lading to be condemned,  
as belonging to enemies, or otherwise subject to confisca-  
tion.

The  
PROVIDENCE.

1746.

June 28.

Contraband.—  
Assistance of-  
fered to rebels.  
—Jurisdiction.  
—Claim.—  
Ship's papers.  
—Owner's lia-  
bility.—Mas-  
ter's power.—  
Condemned.

29th May, 1746. A claim was given in for the ship and  
cargo, as being the property of Messrs. Edmund and Josiah  
Quincy, of Boston, in New England, merchants, subjects  
of Great Britain, who pray restitution of the ship and  
cargo.

This claim is made by Arnold Nesbitt, of London,  
merchant, by orders from Messrs. Thomas and Adrian  
Hope, of Amsterdam, merchants, agents of Messrs. Ed-  
mund and Josiah Quincy.

*Preparatories :*

Richard Butcher, Foremast-man.

This ship Providence is a New England Snow.

Burden about 150 tons.

Eight carriage guns, 4-pounders.

Navigated from Holland to Shields by six mariners, all  
English, besides the master and mate.

Her intended voyage was from Amsterdam to Shields,  
and from thence to Boston, in New England.

The  
PROVIDENCE.  
1746.  
June 28.

At Amsterdam took in twenty-two barrels of gunpowder, some cordage, three chests of small arms, some junk and ballast, and proceeded therewith to Shields, there discharged the ballast, and there took in coals, lead, and bottles, and proceeded therewith to the Orkney Islands, and there Sinclair the master corresponded with Sir James Steuart, and other rebels.

She arrived at the Island of Stromness<sup>1</sup>, in the Orkneys, on 22nd October, 1745.

Continued there till she was seized by the Sheerness man-of-war, in or about March, 1745.

Deponent has been informed the said ship and cargo belong to Messrs. Quincy, merchants, at Boston.

Believes she was taken for assisting the rebels; one barrel of gunpowder sold to them.

II. Magness Cromerty, mariner, examined 16th May, 1746.

In September the ship attempted to sail to Boston, in New England, but meeting with bad weather, was forced to return to the Orkneys, and came to an anchor in Stromness Bay, where she continued till she was taken by the Sheerness.

Deposes as to the rest, the same in substance as the former witness.

III. Jacob Nicholas, mariner, a Swede.

The same.

IV. William Grimstone, mariner, æt. 16.

Deposes the same; says he saw the master of the man-of-war take several papers out of the captain's chest.

<sup>1</sup> Quere, Stronsa.

V. James Davison, mariner, æt. 15.

The same.

The  
PROVIDENCE.  
1746.  
June 28.

*Note.*—All the witnesses say they have heard the ship belongs, and the cargo, to merchants at Boston, and that she, in September, 1745, attempted to sail for Boston, but was forced back to the Orkneys by bad weather; that the master corresponded with the rebels, and delivered a barrel of powder to Sir James Steuart, one of them; and they say, that a Spanish ship coming into Stromness to bring money for the rebels, Sinclair would have attacked that ship, but was dissuaded by Sir James Steuart.

It appears clearly that the ship and cargo is English property, and that the correspondence with the rebels was the act only of the master.

N.B. No ship's papers are brought in.

7th June, 1746.

Alexander Ross, the mate of the ship, whom the captors would not examine on the standing interrogatories, made affidavit, that—

In July, 1745, he was shipped by Sinclair to proceed in the Providence, as mate, from Amsterdam to Newcastle; from thence was to touch at Madeira, and from thence to Boston, in New England.

At Amsterdam Messrs. Thomas and Adrian Hope laded on board said ship, upon the account and risk of Messrs. Edmund and Josiah Quincy, merchants at Boston, 1000 weight of gunpowder, contained in twenty half barrels (and not twenty-two barrels of gunpowder, as deposed by Richard Butcher in his preparatory examinations), some cordage, three chests of small arms, containing 150 muskets, and twenty pair of pistols, two boxes of cutlasses, and



The  
PROVIDENCE  
1746.  
June 28.

some junk, and the ship proceeded therewith for Shields; and while she lay at Shields, the said gunpowder and arms were entered at the Custom House at Newcastle, and cleared outwards for Madeira; the said gunpowder and arms were intended to be delivered at Madeira upon the account of the said Messrs. Quincy, and for no other account whatsoever.

*Dr. Paul*, for the Sheerness.

Providence taken by the Sheerness about beginning of April.

3rd August, 1745, at Amsterdam, shipped gunpowder, cordage, and arms.

Ship claimed by Quincys of Boston, as their property; proceeded from Amsterdam to Shields, from thence to the Orkneys.

Lay there, at St. Margaret's Hope, five or six days.

There Sir James Steuart, a rebel, came on board, and staid five hours with the captain; saluted him with five guns.

Afterwards he came on board, and sailed in her to the Holmes.

Correspondence kept by the master with the rebels, several of whom came on board her, and drank success to the Pretender.

Sinclair came from Steuart's with ten Highlanders, and put them in possession of the ship.

We shall insist that aiding the king's enemies is against stat. 25 Ed. 3., and is treason.

The ship has no papers on board.

The act of the master will make the ship liable to confiscation.

*Dr. Simpson*, same side.

Question, whether their claim can be admitted.

It is given in by Nesbitt upon orders from Hope of Amsterdam.

No proof of the property of the ship.

Navigated from Amsterdam to Shields by six Englishmen, the master and mate Scotchmen ; at Shields takes in a Swede and three English, which he discharged at the Orkneys, and takes three Scotch lads.

The  
PROVIDENCE.  
1746.  
June 28.

Question, whether there is sufficient foundation to admit their claim.

PER CURIAM :

The Court ordered a fuller affidavit from the captain of the Sheerness as to the papers found on board the ship, and likewise Messrs. Hope to make affidavit that they have power from Messrs. Quincy to claim ; adjourned the cause to a future day for that purpose.

The Judge said it was to him doubtful whether the suit should be in this Court or in the Instance Court : it could not be prize unless they had been aiding the French ; for aiding rebels the suit should be in the Instance Court.

June 13. 1746, assigned it to be heard upon the by-day.

*Note.* — Several ship's papers are now brought in by the captors, and with them an affidavit of Captain O'Brien, in which he swears he took the Providence on the 1st of April, 1746.

*Ship's Papers to be read by us.*

Nos. 8 and 9. Agreements with seamen to go to Boston.

No. 28. read by captors.

The  
PROVIDENCE.  
1746.  
June 28.

No. 30. Letter from Hope to Quincy, dated the 11th of August, 1745, in which the Providence is mentioned as Quincy's ship.

No. 31. Account current between Messrs. Quincy and Hopes.

33. Protest made by Sinclair at Stromness, 21st Oct. 1745, that he was prevented pursuing his voyage to Boston by storms.

No. 53. Letter from Messrs. Quincy to Sinclair, dated at Boston, April 19. 1745.

No. 56. Declaration that the Providence is the property of Quincy's, made at Boston, 6th Feb. 1743.

No. 82. Contract with a mariner to go in the Providence to Boston, dated 1st July, 1745.

No. 91. Letter from Quincy to Sinclair, dated Boston, 29th April, 1745.

No. 94. An account of the freight of the Providence for account of Messrs. Quincy of Boston, signed by Messrs. Hope, 6th Sept. 1745.

No. 95. Account of charges on said ship by Hope, dated 28th Aug. 1745.

No. 99. Letter from Quincy to Sinclair, dated 14th April, 1745.

No. 100. Ditto, dated 10th April, 1745, very material, both as it proves the property of Quincy, and that the ship is under the care of Hope.

No. 101. Letter from Mr. Car to Messrs. Quincy, dated at Newcastle, Sept. 6. 1745, in which he addresses to them as owners of the Providence.

No. 102. Invoice of the cargo on board the Providence for the account and risk of Messrs. Quincy, dated Newcastle, 5th Sept. 1745.

No. 103. Letter from Messrs. Hope to Messrs. Quincy,

dated Sept. 1745, mentions having insured the Providence by their order.

The  
PROVIDENCE.

No. 105. A receipt from Sinclair to Hope for money received for the use of the Providence, dated 23d Aug. 1745.

1746.  
June 28.

No. 106. Letter from Hope to Quincy, dated 23d Aug. 1745, by which it appears ship and cargo belong to Quincy.

*Dr. Paul*, for the captors.

Taken the beginning of April by the Sheerness.

A claim by Nesbitt for the Quincys as owners of ship and cargo.

Master had no occasion to go to the Orkneys.

No. 28. shows the Quincys have carried on a trade with Spain : any irregular acts of the master will bind his owners.

*Dr. Simpson*, same side.

From the papers there will be the strongest presumption that the ship is Dutch, consigned to the Hopes to be sold.

Evidence read by the captors.

The five preparatory examinations.

Ship's papers, Nos. 28—30.

Nos. 44—47. 101.

Read for the claimers.

The affidavit of Nesbitt, and the claim.

Affidavit of Alexander Ross.

Ship's papers. — Nos. 8, 9. 31. 33. 53. 56. 82. 91. 93, 94, 95. 99, 100. 102—106.

Affidavit of Mr. Car with the clearance at Newcastle.

*Dr. Paul*, for the captors.

The  
PROVIDENCE.  
1746.  
June 28.

We pray this ship and cargo may be condemned as prize, as being the goods of enemies, or otherwise *liable to confiscation*,

Though the ship may be British; yet if she is upon an unlawful trade she is liable to be confiscated.

The Master and Ross swear the arms were for *Madeira*; Mr. Car swears they are to go to Boston.

Seems to be collusive, for the ship was to go to Boston.

The master often shifts his mariners.

Arms and ammunition taken in at Amsterdam.

Entered at Shields for *Madeira*.

But the Master voluntarily went to the Orkneys.

Received rebels on board him; declared for the rebels.

Sold them a barrel of powder.

Would have given up the ship and cargo to the rebels.

Staid at the Orkneys six months to assist the rebels, and in the harbour hoisted French colours.

The ship was in the possession of the rebels.

From the ship's papers the practices of the Quincys appear, and show they are willing to assist the enemy.

But admit what they did before will not forfeit the ship and cargo upon this voyage.<sup>1</sup>

The act of the master will forfeit the ship.<sup>2</sup>

He can mortgage it, he can claim, he can do all the owners can.

A ship coming from Portugal with money upon freight, the master run away with it.<sup>3</sup> Action brought against

<sup>1</sup> There must be actual *delictum* at moment of seizure.—*Imina*, 3 Rob. 168.; *Lisette*, 6 Rob. 390. n. Not liable on return voyage.—*Imina*, 3 Rob. 168.; *United States*, Stew. 117. Unless under false papers.—*Araminta*, Stew. 47.; *Success*, *id.* 79.

<sup>2</sup> As to owner's responsibility for

acts of master, *vide* Abbott, part 2. c. 2.

<sup>3</sup> This appears to be the case of *Boucher v. Lawson*, Rep. temp. *Hardwicke*, p. 85.; Abbot's *Shipping* (Story's edit.), part 2. c. 2. § 6.; part 3. c. 5. § 2.; st. 7 Geo. 2. c. 15. A.D. 1734.

the owners. A special Act of Parliament made to declare owners should not be liable in such cases.

If a master acts contrary to the statutes of navigation, the ship is forfeited without the fault of the owners.

1725. *The Chandois* came from Africa.

Sold arrack to the Governor of Jamaica, without reporting cargo.

Ship forfeited.

N.B. *By the Act of Parliament expressly.*

Ship carrying contraband goods forfeits, though laden without knowledge of the owners.

Smuggling ships forfeited.

The master's act forfeits as much as the owner's act, for he has all the powers<sup>1</sup> of the owners.

There would be no way to prevent frauds, if the owners were not answerable for the master's acts.

Said these are rebels, not enemies.

They are worse than enemies, and therefore, *a fortiori*, shall forfeit.

*Dr. Simpson*, same side.

In so iniquitous a transaction, it is not surprising that the papers and evidence should differ.

Quincy has traded with the enemy, and has supported them thereby.

Not material who has the property of the ship and cargo.

We are upon the admission of the claim.

If they have forfeited, they cannot claim; for it is not now their property.

A false entry at the Custom-house is, by the Custom Law, forfeiture.

The  
PROVIDENCE.

1746.

June 28.

<sup>1</sup> As to master's power, *vide* Abbot, part 2. c. 2.

The  
PROVIDENCE.

1746.

June 28.

We have taken them out of the hands of the rebels, and therefore, at least, are entitled to salvage.

In many instances, the captain's acts will subject the owners.

The captain has a property in the goods, as soon as they are delivered into his custody.

*Morse v. Slue*<sup>1</sup> held the master might bring action of trover for goods taken from his ship.

The owner would run no risk in sending goods to rebels, if not answerable for the captain's acts.

Sinclair is guilty of high treason.

Would forfeit an estate tail.

N.B. *Only for life of tenant in tail.*

The French had soldiers in Scotland; *ergo*, this ship was assisting the French.

Insist that that alone will subject it to confiscation.

Smuggling vessels condemned, because carrying money and arms to the enemy.

This is the same case.

*Dr. Pinfold*, for the claimers.

Voet, *De Exercit. Actione*, lib. xiv. tit. i. nu. 7. The owners not answerable for faults personal of the master, unless he did them by their approbation, or unless they were gainers by it, or so far only.

PER CURIAM :

The first question is, whether the captain of the *Sheerness* did not properly seize this ship.

It is evident that the master joined with and supported the rebels, who were aided and assisted by the French, who are the King's enemies.

<sup>1</sup> *Morse v. Slue*, 1 Ventr. 190. See also *Abbot on Shipping*, part 3. c. 3. § 3.

Captain Sinclair has acted as a rebel; has delivered the ship up to the rebels.

The Sheerness did his duty.

There is great reason to think the ship and cargo is the property of the Quincys.

But they appear to have been aiding the Spaniards, in carrying on a trade with them through Dutch hands.

The Hopes are plainly the correspondents of the Quincys. The power to Nesbitt from the Hopes to claim is dated on 1st July, 1746, N.S.

But Nesbitt has given in no new claim since, so that there is the same objection to it now as before.

I cannot distinguish between rebels and enemies.

She had contraband goods on board, and she was in the enemies' or rebels' hands, and rebels are worse than enemies.

Therefore I declare Captain O'Brien of the Sheerness has done his duty, and that the ship and goods *are liable to confiscation*, and as such condemned the ship and goods as lawful prize to the captors.

June 28th, 1746.

The  
PROVIDENCE  
1746.  
June 28.

#### THE ST. ERICK. PETER STROM, Master.

The St. Erick, Peter Strom, Master; taken by the Carlisle Privateer, William Owen, Commander.

I am for the captors.

24th May, 1746, about 7 in the morning, this ship was espied by the Carlisle at sea, under sail, *steering north-west and by west, with the wind at north-east, and just*

The St. ERICK.  
1746.  
Sept. 6.  
Contraband.—  
Destination to  
neutral port.—  
Swedish  
Treaty.—Pass-  
port, want of.—  
Justifying  
cause of seizure.  
—Captors'  
costs.



The *ST. ERICK*. *before that steering south-west, between Dunkirk and Ostend,*  
 1746. about two Swedish miles <sup>1</sup> from the shore, and about *three*  
 Sept. 6. *Swedish miles from Dunkirk, and was brought by the*  
*Carlisle into Dover.*

Her cargo was —

373 barrels of tar,

10 iron guns,

60 barrels of gunpowder, and some tobacco.<sup>2</sup>

Seized on suspicion she was going to the enemy with contraband goods, to be delivered at Dunkirk, because she kept in shore, although she had the fairest wind to carry her through the Channel.

By the ship's papers, it appears the vessel belongs to Swedish merchants at Stockholm,

And the bills of lading and other papers declare these goods were laden at Stockholm, and were to be delivered at Leghorn.

Peter Strom, the master,

Borge Oloffson, the mate,

Hans Lanman, the cook,

were examined at Dover, on preparatories, who say that five mariners and a boy, besides the master, belonged to the ship, all Swedes.

40 lasts<sup>3</sup> burden, and built at Finland.

Sailed from Stockholm, bound to Leghorn, and to no other place.

Johan Lunmark, Isaac Strom, and others, were owners of the ship, who are all Swedes, and live at Stockholm.

<sup>1</sup> *Vide note, antè, p. 62.*

<sup>2</sup> As to tobacco being contraband, *vide the Adam*, Edw. Rep. 305.; *Bynk. Quæst. Jur. Pub. c. 10.*;

Heineccius, De Nav. § 14.; *Masse*, Droit Com. tom. i. p. 210.

<sup>3</sup> *Vide note, p. 62.*

Johan Lunmark was the lader and owner of the goods, <sup>The ST. ERICK.</sup>  
 which were to be delivered to the Dutch Consul at Leg-  
 horn. 1746.  
Sept. 6.

That the bills of lading were not colourable.

The master had a Swedish pass when the ship came from Stockholm, but he left it at Elsineur, in Denmark, at the Custom-house, when he cleared there, and took the Danish pass in the room of it.

There was a charter-party signed for the voyage, a copy of which (No. 16.) was on board, but the original was left at Stockholm with the said Lunmark.

*Ship's Papers.*

No. 1. A bill of lading for 373 barrels of tar, 10 pieces of iron guns, and 60 centzner of gunpowder; shipped by Mr. John Lunmark, to be delivered to Messrs. Otto, Frank, and Luthens, or their factors, at Leghorn, dated 9th April, 1746.

No. 2. Bill of lading for two chests and three mats, laden by Mr. Anders Salystroom, to be delivered to his order or his factor, at Leghorn.

No. 3. A clearance.

No. 4. A Swedish let-pass, in which the ship is declared to belong to Swedes, dated 23rd April, 1746.

No. 5. A bill of freedom as a Swedish ship.

No. 9. Declaration of property, dated 23rd April, 1746.

No. 11. An invoice.

No. 12. Instructions from Lunmark to Strom, dated 23rd April, 1746.

No. 16. Copy of charter-party.

No. 15. and 17. Copies of journals.

*Note.*—All the papers seem to be fair and consistent,

The St. ERICK. show the property of the ship and cargo to be Swedish  
1746.  
Sept. 6. and that she was bound to Leghorn.

The ship sailed from Stockholm 26th April, 1746, o.s.

23rd June, 1746, Captain Strom claimed the ship as the property of Johan Lunmark, Sigfreid Jermain, Nils Modin, and Haystroom; and the cargo as the property of the said Johan Lunmark and Andreas Salystroom, all Swedes.

Lunmark has made an affidavit that part of the cargo was his property, and that the voyage was to Leghorn dated at Stockholm, 19th June, 1746.

Haystroom has done the same.

N.B. The objections in order to condemn her are, that she was making to Dunkirk with contraband goods, and that she had not a proper Swedish pass pursuant to treaty.

*Dr. Lee.*

*Dr. Simpson*, for the captors.

*Dr. Pinfold*, for the claimers.

Sailed from Stockholm 26th April, 1746, o. s.

The cargo consigned to Otto Frank and others at Leghorn.

The ship and cargo Swedish, armed with all the proper documents, and the papers fair, and all show she was bound to Leghorn.

*Dr. Jenner*, same side.

*Dr. Pinfold*, for claimers.

Admit this pass is not in the words of the treaty, but answers the end of the treaty.

N.B. *How? that not shown.*

The cargo is not contraband unless it was going to an enemy.<sup>1</sup> The papers all appear fair, and show she was going to Leghorn.

The ST. ERICK.

1746.

Sept. 6.

*Dr. Jenner*, same side.

We have every thing that is requisite to discharge this ship.

The captain could have no other pass, for this is agreeable to their form.

*Anna Catherina*<sup>2</sup>, Danish ship, bound from Nantes to Norway.

Taken by the *Eagle*, because she had not a Danish pass in the form of the treaty with Denmark.

The Court of opinion she had a pass agreeable to the spirit of the treaty, which was sufficient; and the privateer was condemned in costs and damages.

PER CURIAM:

This clearly appears to be a Swedish ship and cargo, and by all the papers she appears to be bound to Leghorn, and I see no evidence to presume she was going to Dunkirk.

But it is evident this ship had not a proper pass according to the treaty, which is our rule to go by.

We can take no notice of their private regulations unless they were established by a new treaty between the nations.

And therefore I think the privateer is justified in bringing her in for want of a pass according to the treaty;

<sup>1</sup> *Vide Imina*, 3 Rob. 168.

<sup>2</sup> October 5, 1745.

The **St. ERICK.** and therefore I restore the ship and cargo, and pronounce  
 1746. just cause of seizure.  
 Sept. 6. And gave the captors costs.  
 Sept. 6. 1746.

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THE NOSTRA SEIGNORA DE PENTHA DE  
 FRANCA. FRANCIS ALMIDA, Master.

The NOSTRA  
 SEIGNORA DE  
 PENTHA DE  
 FRANCA.

1746.  
 Sept. 6.

Contraband.—  
 Portuguese  
 Treaty.—Pro-  
 visions.—Co-  
 lourable papers.  
 —Pass, want  
 of.—Cargo con-  
 demned.—Ship  
 restored.—  
 Freight refused.

The Nostra Seignora de Pentha de Franca, Francis Almida, Master; taken by the Mary Galley, Privateer, Samuel Thomme, Commander.

I am for the captor.

This ship was taken 10th June, 1746, o. s., in the river of Bourdeaux.

Is a Portuguese ship; was bound from Dublin to Bourdeaux.

Burden 45 tons, 9 men.

Took in her cargo at Dublin, consisting of 300 *barrels* of beef, 200 *boxes* of candles, and 9 *tierces* of salmon, and was laded by Mr. J. Pim, merchant, to be delivered at Bourdeaux, where bills of lading signed by the master at Dublin, were sent before.

It does not appear for whose account the lading was shipped.

By the bill of lading on board, it appears the ship was going to Lisbon; it was therefore colourable.

No charter-party.

Had a Portuguese pass.

Captain Thomme, pretending himself to be a French privateer, the captain of the Portuguese ship owned he was going to Bourdeaux, and that his bills were colourable, whereupon Thomme seized him.

THE NOSTRA  
SEIGNORA DE  
PENTHA DE  
FRANCA.

1746.  
Sept. 6.

The above facts appear from the evidence of said master Almida, and of Captain Thomme, who are the only witnesses examined in preparatories.

*Note.* — By the clearance at Dublin she is represented to be bound to Lisbon, and by a letter from Pim to one Pereira, the same ; so that the papers are all colourable.

Ship's papers to be read by us ; No. 1. No. 2. No. 6, No. 7, No. 8.

The cargo was to be delivered at Bourdeaux to Mr. Isaac La Marc Chauvin, but the master says he does not know to whom it belongs.

And he and Matthew Canian, the mate, an Irishman, certified the same under their hands at Guernsey, which certificates are proved by the affidavits of two witnesses.

4th August, 1746.

The master, Almida, gave in a claim on oath for said ship, as being the sole property of Nicholas Pisella, a subject of the King of Portugal, residing at Lisbon.

And claimed the cargo as being in a free ship.

And also claimed costs, damages, demurrage, and expenses.

The question is, whether, under these circumstances, the ship can privilege a cargo of provisions carried from Ireland to the enemy under false bills of lading and clearances.

*Dr. Paul*, for the claimers.

This is a Portuguese ship ; has a passport.

The NOSTRA  
SEIGNORA DE  
PENTHA DE,  
FRANCA.

1746.  
Sept. 6.

Being a free ship, makes the goods free.  
Was laded in Ireland, does not appear that any part of  
it was French property.  
Shall put the whole case on the treaty of 1654.

*Dr. Simpson*, same side.  
Not a tittle of evidence to show it is French property.  
A letter from Pim to Pereira shows the cargo was laded  
for Pereira.

*Dr. Jenner*, *contrà*, for the captors.  
*Treaty*, 1641, with Portugal, art. i. 11.<sup>1</sup>  
*Treaty*, 1654, art. 10.<sup>2</sup>

*Dr. Paul*, for claimers.  
Produce of Ireland is provisions.  
Selling them is for their necessary subsistence. If  
Pim knew they were designed for Bourdeaux, he was only  
assisting Ireland.

Practice and usage confirms a treaty, as was agreed at  
the council.

No question but that the ship is Portuguese.  
Said there is no way of punishing the captain but by  
confiscating the ship.

That is, punishing the owner, not the captain.  
*Young Johannes*<sup>3</sup> was not condemned for having colour-  
able bills.

False bills are often only to prevent being brought in.

*Dr. Simpson*, same side.

<sup>1</sup> D'Hauterive, vol. vii. p. 86.

<sup>2</sup> *Id.* p. 97.; Dumont, vol. vi.

<sup>3</sup> Sept. 4. 1746.

No man can be stript of his property upon presumption.

If this is to be presumed to be Irish property,

It must be presumed, Pim is guilty of treason : he must be presumed to be acting right till the contrary is proved.

The treaty does not require a pass.

'Colourable bills not used here to deceive, but only the more effectually to secure their privilege.

Colouring does not forfeit unless offered in evidence.

PER CURIAM :

So far as it appears to me, this is a Portuguese ship.

She has a pass, but of an old date.

Took in provisions at Dublin for Bourdeaux under false bills and clearances for Lisbon.

It does not plainly appear whose property the cargo was.

Probably it was French.

But, if the cargo was Portuguese, he knew of the colouring.

I do not think this is a case within the treaty of 1654, which has been admitted to be a subsisting treaty.

23rd art. of that treaty must mean only a freedom for enemy's goods, going to or from a Portuguese port.

But that is not the present case.

By the general law neuter nations shall not assist the enemy with contraband goods.

Provisions<sup>1</sup> are and always have been esteemed contraband, and the Government here has as much as possible

The NOSTRA  
SEIGNORA DE  
PENTHA DE  
FRANCA.

1746.

Sept. 6.

<sup>1</sup> Provisions subject to confiscation in 1673. — *Jonge Margaretta*, 1 Rob. 192, 193. Not contraband generally, *Jonge Margaretta*, 1 Rob. 190.; *Frau Margaretta*, 6 Rob. 92.; *Richmond*, 5 Rob. 327. Subject to

pre-emption, *Haabet*, 2 Rob. 182. Contraband going to port of naval equipment. — *Jonge Margaretta*, 1 Rob. 188.; *Zelder Rust*, 6 Rob. 93.; *Frau Margaretta*, 6 Rob. 92.; *Ranger*, 6 Rob. 125.



The NOSTRA  
SEIGNORA DE  
PENTHA DE  
FRANCA.

1746.

Sept. 6.

guarded against sending provisions from Ireland to the enemy.

These provisions were meant for the use of the enemy, and are therefore liable to confiscation.

As to the ship, she appears to be Portuguese.

The treaties have not declared how long passes shall be in force.

The most favourable determination is to restore the ship; and therefore I condemn the cargo, but decree the ship to be restored without costs and without freight.

Sept. 6th, 1746.

DE  
PROVIDENTIA.

1747.

March 18.

Contraband  
naval stores.—  
Russian Treaty,  
1734.—Just  
cause of seizure.  
—Captors' ex-  
penses.—Sale  
in England.—  
On appeal, re-  
versed as to  
costs and sale.

DE PROVIDENTIA. JAN BOYSEN, Master.

De Providentia, Jan Boysen, Master; taken by the Prince of Orange, John Stevenson, Commander.

I am for the captor.

5th Jan. 1747, N. S., this ship was taken and brought to Dover.

This ship was built at Lubeck, and the master, who is a Lubecker, took possession of her there.

14 mariners, all Swedes, Danes and Lubeckers; burthen 186 lasts.

The voyage was from Riga to Brest, Port Louis, Nantes, Rochford and Bourdeaux<sup>1</sup>, at whichever of those places he could get the best market, and then to take in salt at St. Ubes or St. Martins and return to Riga.

<sup>1</sup> As to discretionary destination, *vide ante*, p. 50.

The owners of the ship (as the master swears) are all Russians and live at Riga, and that he had her built for them.

DE  
PROVIDENTIA.  
1747.  
March 18.

But there was not a bill of sale made of her.

The lading consisted of —

132 masts and spars,

26 eldern pump woods,

1240 small spars,

209 schock of hogsheads staves<sup>1</sup>,

8 schock of pipe staves,

6 schock of clapboard<sup>2</sup>,

And 343 ship-pound and 10 lis-pound of pass<sup>3</sup> hemp.

And the owners of the ship are the laders and owners of the cargo, who sent them to be sold to the highest bidder at the best market.

1 bill of lading on board, not colourable.

The ship taken between Dover and Calais.

No charter-party.

No. 6. is a paper on board of instructions from one of the owners to the captain at what prices he shall sell the cargo; and at the end has this clause: —

“ If it should happen that the captain should be molested at sea by one or other English men-of-war or privateers, he must forthwith apply to the Minister of her Majesty the Empress of all Russia, at London, make his complaints of the wrong which is done him, and demand his protection; *since, pursuant to the Treaty of Commerce*

<sup>1</sup> Staves (Germ. *stäbe*), wood prepared for casks, &c., and divided, according to its appropriation, into—

(*Ochshoofd*) hogshead, }  
(*Pipen*) pipe, or } staves.  
(*Tonner*) barrel, }

They are sold by schock, ring, and long thousand.

1 schock contains 60 staves.

1 ring “ 4 schocks.

1 long thousand 1200 staves.

<sup>2</sup> German, *klappbord*, *set-bord*; Engl. *wash-board*.

<sup>3</sup> *Vide Evert*, 4 Rob. 354.

DE  
PROVIDENTIA.

1747.  
March 18.

*"concluded on the 2nd of Dec. 1734, between her Imperial Majesty of Russia and the King of England, the ship is not laden with any contraband goods, and therefore is at liberty to sail for the ports of France."*

13th Jan. 1747.

The master claimed the ship and cargo as being wholly Russian property, and as being seized in violation of the treaties.

N. B. The ship and cargo fully appear to be Russian property, and the only question is, whether the goods are not contraband within the treaties between England and Russia, and as such confiscable.

*Dr. Paul*, for the claimers.

Has a proper sea-pass and a certificate of the property.

Ship was laden at Riga, and is clearly a Russian ship.

Rely on 11th<sup>1</sup> article of the treaty with Russia of 2nd Dec. 1734.

*Vierge Marie*<sup>2</sup> 14th Dec. 1744: the ship and cargo restored upon this treaty.

Appealed: Lords of opinion, that if the cargo was Russian, it must be restored, but that was doubtful: the Lords ordered proof to be made, it really was French property, and so the cargo was given up.

*Dr. Jenner*, same side.

*Dr. Simpson*, for the captors.

*Vierge Marie*, a Dantzick ship, and therefore the Lords could not, in that case, determine upon the Russian trade.

*Dr. Paul*, for the claimant,

<sup>1</sup> *Vide D'Hauterive*, vol. vii. p. 189.

<sup>2</sup> *Vide antè*, p. 38.

Insist first that it is a Russian ship.

2. That it is a Russian cargo, and protected by the treaty on board a Russian ship.

Where several things are enumerated as contraband every thing else is not so.

9. Art. of Instructions: Privateers shall not do anything contrary to any treaties.

Insist this case was determined in the cause of the *Vierge Marie*.<sup>1</sup>

DE  
PROVIDENTIA.  
1747.  
March 18.

*Dr. Jenner*, same side.

Insist, first, on the property of the ship and cargo as Russian.

PER CURIAM:

It appears this ship was built at Lubeck.

The pass is like the Dutch passes.

I think this ship and cargo does appear to be Russian.

But the ship is not navigated by one Russian.

The cargo was not destined to any particular port in France.

Carried for the sake of trade, not with the view to aid the enemy, and is of the growth and produce of Russia.

I must consider whether this case comes under the treaty of 1734.

Naval stores are not mentioned in that treaty as contraband, nor, on the other hand, are they declared not to be contraband; but by the 5th art. of the King's Instructions, naval stores are declared to be contraband, and are to be confiscated; and in those instructions the Treaty of Russia is not mentioned.

9th article of Instructions is not clear and explicit.

<sup>1</sup> *Vide* p. 38.

DE  
PROVIDENTIA.

1747.  
March 18.

Privateers have not the treaties given them, and therefore they are excusable if they mistake.

And I think they may well be justified in bringing in Russian ships with naval stores.

I am of opinion there is sufficient foundation, by the treaty of 1734, art. 11.<sup>1</sup>, to restore this ship and cargo; for by that 11th article they seem to have a right of carrying naval stores to the enemy.

But the Privateer did right in bringing in the ship, and as it is here, the cargo ought not to be allowed to be carried to France.

The Court decreed the ship and cargo to be restored to the claimers, but security to be given to sell the cargo in England.

And pronounced just cause of seizure and expenses to be due to the captors.

March 18th, 1747.

14th December, 1749.

This cause was heard on appeal by the Lords: they affirmed the decree of the Judge of the Admiralty, as to pronouncing just cause of seizure, but reversed it as to the costs given to the privateer, and pronounced that both sides should bear their own expenses; and also reversed that part of the decree which ordered the claimants to give security to sell the cargo in England by a certain time.

Lords present: Duke of Dorset, Lord Bathurst, Mr. Finch, Mr. Legge, Mr. Justice Birch.

<sup>1</sup> Dumont, tom. ii. suppl.; D'Hauterive, tom. vii. p. 183.

YOUNG ANDREAS.<sup>1</sup> HENDRICK BARKHOLM, Master.

Young Andreas, Hendrick Barkholm, Master; taken by the Mary Galley, Peter Oliver Master, and brought to Guernsey.

I am for the captor.

This is a Prussian ship, taken 24th of August, 1747, o. s.

7 men, 100 tons;

Bound from Dublin to Rochfort, laden with butter, tallow, and coals.

He had been trading from Ireland to several ports in France for several voyages.

22 tons and half of butter, 3 tons of tallow, and 70 tons of coals.

Espanhiac, Calvit, and others, Prussians, are the owners of the coals, and the master is the owner of two tuns of butter; does not know who is the owner of the rest of the butter.

Cleared for Lisbon, and had a bill of lading for that place.

19th October, 1747.

Claim was given for the ship and the 70 tons of coals as Prussian property, and for 2 tons of butter as being the master's.

3rd November: the rest of the cargo was condemned.

The question is now on the goods claimed.

N.B. The claimers have made affidavit as to their property.

YOUNG  
ANDREAS.

1747.

March 22.

Contraband  
butter.—Un-  
claimed goods.  
—Condemned.  
—*Coals contra-*  
*band?*—  
Freight refused.

<sup>1</sup> This case cited, *Jonye Margaretta*, 1 Rob. 193.

YOUNG  
ANDREAS  
1747.  
March 22.

*Dr. Paul* for the claimers.

The captain has acted with great fairness.

2 tons of butter is so small a quantity that it cannot be contraband.

PER CURIAM:

Coals are not insisted on as contraband; and therefore I shall not declare my opinion on them further than that they are of great use to the enemy.

Butter is contraband; the 2 tons must be considered as part of the 22 tons.

And therefore I restore the ship and 70 tons of coals claimed, and condemned the 2 tons of butter.

Freight for the goods condemned was asked but refused by the Court.

March 22nd, 1747.

DE JUMFRO  
SARAH, OF  
DRONTON.

## DE JUMFRO SARAH, OF DRONTON.

JOHANNES LYDERSON, Master.

1747.  
March 24.  
Contraband.—  
Wheat, butter.  
—Destination,  
Lisbon, but  
presumptive  
evidence of its  
being to a  
French port.—  
Cargo con-  
demned.—Ship  
restored.—No  
freight.

De Jumfro Sarah of Dronton, Johannes Lyderson, Master; taken by the George Privateer, Charles Gordon, Commander.

I am for the captor.

The master's deposition.

Taken the 25th Oct. 1747, o. s. and carried to Guernsey, navigated by nine men, and had a passenger on board who

was an Irishman; seven of the nine are Danes, the other two Irish.

Burthen, 140 tons.

James Brown, an Irishman by birth, but who lives at Dronton<sup>1</sup>, in Norway, is owner of the ship.

The voyage in which she was taken she sailed from Dublin, bound for Lisbon.

Lading, 145 *tons of wheat* and 26 barrels of butter.

The master says Wm. Delap was the lader of the wheat, who lives at Dublin, but he does not know who is the owner.

The said lading was to be delivered at Lisbon, to Don Antonio Pereira Viana, merchant there, but doth not know for whose account.

And he, the master is owner of the 26 barrels of butter; signed two bills of lading which are not colourable; one on board, the other left with Delap.

The master says the ship was seized on Sunday, 25th October, 1747, about 7 or 8 at night, in *Lat. 46 degrees about 25 Dutch miles<sup>2</sup> from the Isle of Rhe.*

Says he never kept a journal on board.

There was not a charter-party, but there was a bill of sale for the ship on board.

The mate, who is an Irishman, agrees with the master.

Says they were bound for Lisbon, as the master told him, and were taken in the Bay of Biscay, but does not know what distance from the land, not having kept any journal.

<sup>1</sup> Drontheim, or Trondheim.

<sup>2</sup> A Dutch mile is about five English furlongs.

DE JUMFRO  
SARAH, OF  
DRONTON.

1747.  
March 24.



DE JUMFRE  
SARAH, OF  
DRONTON.

1747.  
March 24.

Nicholas Broman, a mariner on board the ship, who says he is a Swede.

5. Int.: Says that he takes Lyderson to be master of the ship, and knows him to be so because deponent shipped himself to him; but before and after they sailed from Dublin, one Mr. Dolf, of Dublin, belonging to the said vessel, commanded in her, and ordered what course to steer, the same as Lyderson did, and does not know which of them is actually the master.

Says there were ten men on board: 3 Danes, 3 Dutch, 3 Irish, and 1 Swede.

The 3 Dutch, 3 Irish, and the Swede, came on board at Dublin.

Says the ship is London-built, but the master does not know what build she is of.

Deponent was shipped for Lisbon, but when they came to sea, *instead of steering the right course for Lisbon, they steered for the coast of France.*

Says the ship was seized in the *Bay of Biscay, near the River of Bourdeaux, in expectation of making the French land the next morning.*

Sandberg, the boatswain, the fourth witness,

Says they were going to Lisbon, as he heard his captain say, and that before they espied the privateer, she was going before the wind, the wind being then about N.N.W. or N.W.; but on seeing the privateer, they altered their course, and hauled upon a wind.

*Ship was seized in the Bay of Biscay, but does not know what distance from the land.*

It appears from the papers that the ship sailed in August, 1746, from Dronton to Bourdeaux with timber.

No. 10. is a bill of sale, by which it appears that this,

which was London-built, was called the Elizabeth of Bourdeaux, and was sold by Jacques and August Boyd of Bourdeaux on the 15th April, 1746, when she was on a voyage to Barton of Bourdeaux, for 3000 livres, and Barton sold it to Brown on the same day for the same price, and to this sale is annexed an act of acceptance signed by Brown, dated 5th July, 1746, at Dronton.

DE JUMFRO  
SARAH, OF  
DRONTON.

1747.  
March 24.

The sale and acceptance are registered in the Admiralty of Guienne, 23d August, 1746.

No. 16. is a clearance at Dublin, dated 24th Sept. 1747, by which it appears that Delap entered the butter as well as the rest of the cargo, though the master swears it is his.

No. 17. is a bill of lading for 145 tons and a half of wheat laden by William Delap, for the account and risk of Don Antonio Pereira Viana, merchant at Lisbon, to be delivered at Lisbon to him or his assigns, dated Dublin, 1st Oct. 1747.

15th Dec. 1747. Lyderson, the master, gave in a claim on oath for the ship, as being the sole property of James Brown of Dronton, a Danish subject, and for 27 casks of butter, being the property of the said master, also a Danish subject, and for freight, primage, average, demurrage, and expenses.

3d Feb. 1747. Arnold Nesbitt of London, merchant, gave in a claim on his oath, on behalf of William Delap of Dublin, merchant, for all the goods, wares, and merchandizes laden on board the ship Jumfro Sarah, of Dronton, as being the sole property of the said Delap.

*Dr. Simpson*, for the claimers.

DE JUMPRO  
SARAH, OF  
DRONTON.

1747.  
March 24.

Presumption of law is, that an Englishman will not act contrary to law.

The captain swears they were bound to Lisbon, and the mariners that they were hired for Lisbon.

The clearance is no evidence that the butter is Delap's property.

*Dr. Hay*, same side.

Broman is not to be credited against all the rest of the mariners, especially when he has sworn that Duff was the master, which appears to be false.

PER CURIAM :

Delap put the whole cargo on board at Dublin, and therefore Nesbitt might well claim it as his entire property.

It does not appear that Delap had any correspondence with Viana of Lisbon.

Could not clear for France, and therefore must clear for a neutral port.

The course of the evidence tends to show she was bound to Bourdeaux. I think the presumption that she was going thither is very strong.

And therefore I do condemn the cargo as contraband<sup>1</sup>, and restore the ship without freight.

March 24. 1747.

<sup>1</sup> Wheat favourably considered.—*Jonge Maryaretta*, 1 Rob. 195. Butter contraband.—*Vide antè*, *Young Andreas*, p. 99. False papers or destination work condemnation

of ship as well as contraband cargo.—*Franklin*, 3 Rob. 224.; *Neutralitet*, 3 Rob. 296.; *Ranger*, 6 Rob. 127.

## DE TWEELLINGE. FRANTZ KUHT, Master.

De Tweellinge, Frantz Kuht, Master; taken by the Prince Frederick, man-of-war, Captain Harry Norris, Commander.

I am for the claimant.

This is a Prussian ship, had a pass and all proper documents relating to the ship and cargo.

Was taken on 1st August, 1747, O. S.

She was laden with a cargo of divers sorts of oak planks of several dimensions fit for shipping or building, pipe staves and hogsheads' staves<sup>1</sup>, and some fir and other timber, which were laden at Stettin by Mr. Greffe, a Prussian subject, for his account and risk, and being his sole property, but *to be delivered at Brest*.

The ship is the property of Mr. John Jacob Vanselon, of Stettin.

Was chartered to Mr. Greffe, of Stettin, merchant.

In June, 1747, took in a cargo at Stettin, consisting of 419 planks, 420 small fir deals, 248 spars, 3120 pipe staves, and 1560 barrel staves, shipped by said Greffe for his sole account and risk.

After this cargo was delivered at Brest, the ship was to have proceeded to Rochelle to lade salt on account of the owner, and then to have returned to the Baltic therewith.

She was taken under Prussian colours six or seven leagues to the eastward of Ushant, and brought to Plymouth.

On the 7th September, a monition was taken out by

DE  
TWEELLINGE.

1747-8.

March 22.

Contraband.—  
Ship timber and  
materials.—  
Monition to  
proceed.—  
Ship's papers  
not on oath.—  
Instructions.—  
Destination,  
Brest.—Ship  
restored.—  
Cargo con-  
demned.

<sup>1</sup> *Vide antè*, p. 95. n.

DE  
TWEELLINGE.

1747-8.  
March 22.

the claimant against Captain Norris to proceed to condemnation.

Returned 8th October, after which Captain Norris took out a monition, returnable on the 3rd November.

17th November. Examinations and three ships' papers brought in not on oath.

20th. The claimant's proctor brought in an affidavit of Luder Mello and five ship's papers, which Captain Norris had returned to the captain of the Tweellinge.

No affidavit from the captor as to the ship's papers.

The ship was proceeding on freight which he was to have received at Brest, but it does not appear from whom by name, and was not consigned to any particular person at Brest, but was to have met orders there.

7th December, 1747.

Mr. Mello, as agent for Frantz Kuht, the master, claimed on oath the ship *as being the sole property of John Jacob Vanselow, a Prussian subject.*

And claimed the cargo as the sole property of James Greffe, a Prussian, residing at Stettin, and also claimed demurrage, &c.

This ship was taken in sight of four English men-of-war.

No resistance.

Nine mariners all Prussians.

To 6th interrogatory, the master says he is owner of  $\frac{1}{8}$ th of the ship.

Burthen, 210 tons.

To 9th interrogatory, swears Greffe said he was the owner

of the cargo, but on whose account it was to have been delivered at Brest he cannot set forth; but refuses to declare his belief concerning the same, and refers to his papers to prove the property thereof.

DE  
TWEELLINGE.  
1747-8.  
March 22.

Deponent signed three bills of lading, all of the same tenor with that on board; believes Greffe sent one of them to Brest dated 11th July, 1747.

No. 2. The pass dated Stettin, July 14. 1747, for the goods.

No. 4. Pass for the ship, dated 27th June, 1747.

No. 6. Charter-party, dated at Stettin, 15th June, 1747.

No. 7. Roll of equipage.

No. 8. Biel brief, dated 25th June, 1747.

The question is, whether this cargo be contraband or not.

*Dr. Paul*, for the captors.

Claim for Vanselow as owner of the ship, and Greffe of the cargo.

26th May, 1747. *Fredericus 2dus*<sup>1</sup>,

*Endraght*<sup>2</sup>, Prussian ships.

Cargoes condemned as contraband.

The question is, whether this cargo is contraband or not.

Instructions are that all materials for shipping are contraband.

419 oaken planks for shipping are clearly contraband.

*The Elizabeth*, 1400 deals: condemned as contraband.

Supposing the cargo was Greffe's, he might have sold it before the capture.

*Dr. Salisbury*, same side.

<sup>1</sup> *Vide post*, p. 109.

<sup>2</sup> *Vide p.* 123.

DE  
TWEELLINGE.  
1747-8.  
March 22.

Only upon freight to be paid in France.

*Dr. Jenner*, for the claimer.

*Fortune de la Mer*<sup>1</sup>, laden with timber. Restored.

PER CURIAM:

This clearly a Prussian ship and cargo.

The dimensions of the spars does not appear.

This cargo is of the growth<sup>2</sup> of Prussia, but by the laws of nations a neuter is not to aid either of the belligerent parties.

Sovereigns have a right to declare what shall be deemed contraband<sup>3</sup>, and have always done so.

We have no marine treaty with Prussia.

It must be presumed the instructions to privateers have been notified to foreign courts.

In the 5th instruction all equipage for shipping is declared to be contraband.

Pipe staves singly would not be contraband, but in company with other things that are, they are liable to be condemned.

This cargo was to be delivered at Brest, where the men-of-war are built.

This cargo, though originally Greffe's, might be sold afterwards to the French.

As this is a cargo fit for shipping, I am of opinion it is contraband; and therefore decree the ship to be restored, and condemn the cargo.

March 22nd, 1747-8.

<sup>1</sup> *Vide antè*, p. 33.

<sup>2</sup> As to growth or produce of neutral countries, *vide antè*, p. 49.

<sup>3</sup> Notification, *vide antè*, p. 49.

FREDERICUS SECUNDUS, KONING VAN  
PRUSSIEN. CHRISTIAN SCHULTZ, Master.

Fredericus Secundus, Koning Van Prussien, Christian Schultz, Master; taken by the Eagle, Baxley, Commander.

I am for the captors.

Taken at 10 in the forenoon, on 16th November, 1746, N. S., at sea, in mid channel, between Dover and Calais.

Brought to Dover; no resistance.

Manned with 5 men and 2 boys; all Prussians except one Swede.

36 lasts burthen.

Was bound from Hofsand in Norway, to Bourdeaux; and before that, from Koningsberg; voyage began at Koningsberg, and was to end at Bourdeaux.

Lading — hemp, pipe staves, and fir deals for dullage, and no other goods.

Had different bills of lading; some for delivery thereof at Bourdeaux, others at Lisbon.

Philip Maas, and Frederick Bischoff are owners of the ship; both Prussians.

Lading, 103,193 pounds of hemp, 120 pipe staves, and 21 fir deals for dullage.

Messrs. Hillman and Horn, Prussians, were the laders thereof.

Goods were to be delivered at Bourdeaux, for the account of the said owners, to Baval and Company.

Six bills of lading, signed; five colourable, and of same tenor with that on board, No. 2.

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSIEN.

1747.

May 26.

Contraband.—  
Hemp.—Co-  
lourable papers.  
—Property of  
same owners.—  
Affidavit of  
owners ordered,  
not brought in.  
—Owners' lia-  
bility.—Cargo  
condemned.—  
Ship restored.  
—Freight re-  
fused.



FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSIEN.  
1747.  
March 26.

Left the Prussian pass at Elseineur, to obtain the Danish pass.

There is a charter-party.

The above facts are proved by Christian Schultz, the master.

## II. Syord Wessels Swaart, Mate.

8th Interrogatory. Says the ship was bound to Lisbon, for he was hired for a voyage to Lisbon and no other place, and there the voyage was to end.

9. Does not know who were owners of the ship.

## III. Jacob Pelican, cook.

9. Philip Maas, and Frederick Bischoff, both Prussians, are owners of the ship.

## *Ship's Papers.*

No. 1. A bill brief, dated at Koningsberg, 22nd September, 1746, in which the shipwrights upon oath declare they built it for Maas and Bischoff.

No. 2. Bill of lading for the hemp to be delivered at Lisbon on account of Hillman and Horn, to Baval, signed 8th October, 1746.

No. 3. Another bill of the same tenor and date for delivery of the hemp to Baval at Bourdeaux.

No. 4. Charter-party between Hillman and Horn and the master, to go to Bourdeaux. Agrees he shall go to Bourdeaux, but all his papers shall be for Lisbon, dated 15th September, 1746; is attested by, and under seal of the College of Admiralty at Koningsberg.

No. 5. Clearance at Oresund, for Lisbon, dated 24th October, 1746.

No. 6. Certificate of the College of Admiralty, that

Philip Maas and Frederick Bischoff had made oath that the ship is their sole property.

No. 7. Account of the crew.

Maas and Bischoff mentioned as owners.

No. 8. Clearance for Lisbon.

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSIEN.

1747.

March 26.

1st December, 1746.

Claim by Christian Schultz, the master, for the ship, as being the property of said Philip Maas and Frederick Bischoff, Prussians, and for freight, average, demurrage, &c., but no claim for the lading.

The Judge, by interlocutory, condemned the hemp as contraband, and liable to confiscation, but reserved the consideration of the pipe staves and fir deals, and of the ship, until Saturday next.

December 9. 1746.

Upon the question concerning the condemnation of the ship and the rest of the cargo,

*Dr. Jenner*, for the claimers:

The hemp has been condemned as contraband.

Only 21 fir deals for dullage, and the pipe staves belong to the captain and crew.

Claim for the ship includes all her stores, &c.; the deals were for dullage, and therefore belong to the ship.

The deals and pipe staves are not worth above 6*l*.

Law of nations to be collected from treaties: they are drove to presumption that the owners were cognizant of the unlawful trade.

The *Louisa*, *Stanberg*, *Master*: ship restored upon hearing further arguments.

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSIEN.

1747.  
March 26.

*Nostra Signora de Pentha de Franca*<sup>1</sup>, cleared from Dublin to Lisbon with provisions : ship restored.

*Gebroeders*<sup>2</sup>, *Young Johannes*<sup>3</sup>, fictitious bills of lading carrying timber for the French : cargoes condemned, ships restored.

PER CURIAM :

As to the pipe staves and deals, by the master's evidence to 11th interrogatory they appear to be laded by, and to belong to, the same owner as the hemp, and therefore must be condemned.

I do not know there is any treaty between us and the Prussians.

The master has entered into a charter-party, but it does not appear that the owners were privy to it, and therefore cannot say whether they are in *mala fides* or not.

Have not determined upon Prussian ships under the like circumstances.

If the owners are not in *mala fides* it is hard they should suffer, and therefore I direct the owners shall make affidavits that they were no ways privy to the charter-party.

December 13. 1746.

The owners have made no affidavits according to the order of Court, but on the 17th January, 1746, Christian Schultz, the master, made affidavit that the owners gave him full power to let the ship out upon freight by charter-party or otherwise, to such persons, on such voyages, and under such conditions and restrictions as he should think proper, without advising with them ; and that deponent or the

<sup>1</sup> *Vide antè*, p. 90.

<sup>2</sup> *De Vier Gebroeders*, Sept. 6. 746.

<sup>3</sup> Sept. 4. 1746.

ship's broker did, on or about the 15th September, 1746, let the ship to freight to Hillman and Horn, upon the voyage, and under the restrictions in the charter-party executed by the said Hillman and Horn on the one part, and by deponent, as master, on the other part.

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSEN.

1747.

March 26.

Deponent, looking on himself to have sufficient powers so to do, swears that he did enter into and execute the said charter-party, as master, without advising with either of the owners, or so much as showing or acquainting either of them with the same, or of any part of the conditions or contents thereof, to all which he believes the said owners were entire strangers when the ship sailed from Koningsberg on the voyage wherein she was taken, and believes the owners of the ship knew nothing of the said charter-party, or the contents thereof, till after the ship was taken.

N. B. *The owners having vested full powers in the master, his act becomes their own, and shall subject their property to forfeiture.*

*Dr. Jenner*, for the owners.

We objected that the order of Court was not complied with, for the owners ought to have made the affidavit.

The Court gave them time to the first day of Easter Term to exhibit affidavits from the owners.

February 16th, 1746-7.

The owners did not give any affidavits, and so the cause as to the ship came on to be heard again upon the same evidence as it stood on the 16th February last.

*Dr. Jenner*, for the claimers :

The captain did not claim the hemp.

Condemned without opposition ; now insisted this ship

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSEN.

1747.  
March 26.

is to be condemned by the law of nations, as she was carrying contraband to the enemy.

Deny the position.

The ship is clearly Prussian property.

A ship is not forfeitable for carrying any contraband but such as are so in their own nature.

Sir Leoline Jenkins held tar<sup>1</sup> not to be contraband in its own nature.

Hemp<sup>1</sup> is only declared to be so by the King's Instructions, which direct ships having such goods to be brought in as *prize*.

PER CURIAM:

I should have been glad if the owners had made an affidavit to prove they were not privy to the charter-party.

The *mala fides* in the captain is clear from the whole evidence; by his affidavit he had full power to let out the ship.

The cargo which is condemned is the produce of Koenigsberg, and is not contraband in its own nature.

The owners, as the captain swears, did not know of the charter-party.

By the Text Law the ship is not forfeited, unless the owners had knowledge of the contraband goods being put on board.

I don't know there has been the like point before the Court as to Prussian ships.

By King's Instructions, ships with such cargoes are to

<sup>1</sup> Hemp and tar, under modern law of nations, liable to be seized as contraband in its own nature, formerly of a disputable nature.—*Maria*, 1 Rob. 372. Hemp forbid-

den by Danish Treaty.—*Ad. Art.* July 4. 1780; *Ringende Jacob*, 1 Rob. 90. Hemp contraband.—*The Franklin*, 3 R. 217.

be brought in *as prize*, but it does not follow that they are therefore to be condemned as prize.

And therefore as it does not appear that the owners of the ship were privy to this transaction of the master's, I decree the ship to be restored, but give no freight.

May 26. 1747.

FREDERICUS  
SECUNDUS,  
KONING VAN  
PRUSSIEN.

1747.  
March 26.

ELIZABETH CATHERINA. AREND CORNIELZEN,  
Master.

Elizabeth Catherina, Arend Cornielzen, Master; taken  
by the Cumberland privateer, Henry Cooper, Commander.

ELIZABETH  
CATHERINA.

1747.  
June 20.

I am for the claimers.

This ship was built at Stralsund, in Sweden.

Is the property of Cornielzen, the master, Carl Wilhelm Stievelewen, and Christian Heble, all subjects of Sweden.

Navigated by eight men and three boys, besides the master; all Swedes.

At Port Louis, in France, she loaded wine and brandy, and sailed from thence bound for Havre de Grace.

By the bills of lading it is said that the ship was bound from St. Louis de Cette in France to Middleburgh in Zealand, and that the goods were consigned to Peter Schoonhaven and Gaspard Riband and Son; but the master, on the eleventh interrogatory, swears that by the verbal order of the freighter, De Heer Van Prussen, the goods were to be delivered at Havre de Grace to such persons there as should produce the bills of lading.

Contraband.—  
Provisions.—  
Lending ship  
to enemy.—  
Master part  
owner.—False  
papers.—Ship  
and cargo con-  
demned.

ELIZABETH  
CATHERINA.

1747.

June 20.

In his voyage from Port Louis to Havre he was forced, by stress of weather, to Norway, on the 18th March, 1746; but in twelve days sailed from thence for Havre.

1st April, 1747, o.s., taken by the Cumberland between Dover and Folkstone, and brought to Dover.

2nd May. The master claimed ship and cargo, but in his affidavit only swears to the property of the ship.

By the Certificate of Admeasurement (No. 1.), the Patent of Immunities by the Counsellors and College of Trade at Stockholm (No. 5.), and by the Mariner's Contract (No. 7.) and Burgher Brief (No. 9.), it appears fully that the ship is Swedish.

There is a charter-party (No. 11.), in which the ship is said to be hired at freight for Middleburgh.

The Master, to twelfth interrogatory, swears that the bills of lading on board were colourable, and that five others were signed for the goods of a different tenor.

Though we have claimed the cargo, we only pray restitution of the ship, &c., and 100 deals, which belong to the master; and freight, demurrage, and costs.

2nd April. The captors examined on preparatories at Dover.

1. Arend Cornielzen, the master, who swears one-fourth of the ship and 100 deals are his property.

Ship's burthen, 74 lasts.

Sailed from Port Louis on 7th January, 1746, n.s.

The cargo consisted of 162 tons of red wine, 6 pieces of brandy, and 11 barrels of goods.

Daniel Laurens and Company were the laders thereof, who are Frenchmen, and live at Port Louis; and the Heer Van Prussen was the freighter thereof, who lives at Marseilles.

ELIZABETH  
CATHERINA.

1747.  
June 20,

Eight bills of lading, three colourable, five of a different tenor, for delivery of the goods at Havre, were sent overland.

Three charter-parties signed, two of them colourable, marked Nos. 10, 11., and the other sent overland, and was made between Van Prussen and deponent at Marseilles.

II. Pieter Angelyn, mate.

III. Hendrick Limberg, boatswain, who agree with Cornielzen.

The question is, whether the ship is liable to confiscation on account of Cornielzen, who is a part owner, having signed false bills of lading and charter-party, to cover French property.

*Dr. Simpson* and *Dr. Jenner*, for the captors.

Plainly appears this is a ship lent to the French.

Admit it is a Swedish ship.

*Dr. Collier* and I, *contrà*, for the claimers.

*Dr. Simpson*, for the captors.

No doubt but that the ship was chartered to the French.

Provisions a general term which extends to drink as well as meat. If wine is provisions, then this case is exactly the same as the *Vrouw Anna Maria*<sup>1</sup>, and the ship is forfeited for carrying contraband goods.

<sup>1</sup> *Vide post*, p. 119.



ELIZABETH  
CATHERINA.

1747.

June 20.

No pretence for freight to be allowed the captain.

*Dr. Jenner*, same side.

He is an enemy who assists an enemy of ours.

False bills of lading cause of forfeiture, because it is an endeavour to assist the enemy.

Here the ship is *lent* to the enemy.

*Order of Council*, 1664, art. 4.<sup>1</sup>

Destroying papers, or false bills brought *as evidence* to clear the ship, shall be the cause of condemning her.

Where ships have been carrying enemies' goods from one port of an enemy to another, have always been condemned.

*Castle Royal of Altona*, 1691, laden with brandy, wine, &c.

Bound from Bourdeaux to Dunkirk.

Ship only claimed. Court condemned the ship, which belonged to Danes.

*The Fortune*, in 1692, Swedish ship,

Bound from Dunkirk to Rochelle.

Ship condemned. Do not know the cargo.

*City of Warsaw*, 1692, condemned.

Affirmed by the Lords. False bills of lading.

PER CURIAM :

It is a good deal like the case of the *Vrow Anna Maria*. The voyage is plainly for the advantage of the enemy.

<sup>1</sup> "That where any ship met withal by any of the King's royal navy or other ships commissioned by his authority shall fight or make resistance, or the master or any of the company shall throw away, burn, tear, or conceal any of the ship's papers or documents, or shall have no papers at all found on board in

the said ship, or shall bring or offer to the Court any false or double writing for evidence thereof to clear her or her goods, or any of them, the said ship and goods shall be judged and condemned as good and lawful prize." — *Vide* also Order of Council, May 22. 1672, art. 3.

Was hired upon charter-party by the French.

This is a lending of the ship to them.

Wine and brandy are provisions.

*Commeatus* is a general term, and signifies drink as well as eatables.

Wine is the common drink of France.

The pass on board is not according to the treaty.

This ship was assisting the enemy, and the master, who has acted colourably, was a part owner of the ship.

And therefore I pronounce that the ship and cargo ought to be condemned.

Decreed accordingly, June 20th, 1747.

Captain Bazely claimed to be a joint captor, and said he gave an allegation.

ELIZABETH  
CATHERINA.

1747.

June 20.

DE VROW ANNA MARIA. JACOB HORN, Master.

De Vrow Anna Maria, Jacob Horn, Master; taken by the Cumberland Privateer, Henry Cooper, Commander, and brought to Dover.

I am for the captors.

This is a Swedish ship bound from Dunkirk to Bourdeaux, laden with wheat on freight.

Was taken in the afternoon of the 4th of May, 1747, o.s., at ten, about three leagues from Dungeness.

No resistance.

Seven mariners and a boy, all Swedes and Hollanders.

Ship was built at Stralsund, about three years ago. Burthen, 80 lasts.

DE VROW  
ANNA MARIA.

1747.

June 20.

Contraband.—  
Wheat.—  
Claim, want  
of.—False pa-  
pers.—Master  
part owner.—  
Ship and cargo  
condemned.—  
Decree deli-  
vered to captain  
of privateer.

DE VROW  
ANNA MARIA

1747.

June 20.

Carl Frederick Lichtenfeldt, Jurgend Borend Brandenburg, Martin Augustien Van Essen, and Johan Fredrick Kempe and Jacob Horn, the master, all Swedes, are the owners of the ship.

The master in a sixth part.

There was no bill of sale for the ship.

The lading consists of 1815 sacks of wheat.

Jacques Laine, a Frenchman, living at Dunkirk, is the owner of the wheat and the lading.

It was to be delivered at Bourdeaux on the said Laine's account.

But in the bills of lading it is falsely said to be on account of the owners of the ship.

No charter-party.

6th May, 1747. The captors examined Jacob Horn, the master; Martin Schmit, the mate: and Wilkelm Byssik, the boatswain; who prove the above facts.

*Ship's Papers.*

C. and D. Letters from one of the owners to the master, directing him to get freight at Dunkirk.

No. 8. A letter from the master to his owners, dated at Dunkirk 28th April, 1747, desiring their directions where he shall go next.

No. 1. Bill of lading for 1815 sacks of wheat, for account of the proprietors of the ship, shipped by Jacques Laine, to be delivered at Bourdeaux to Mr. De Rycher, dated at Dunkirk, 12th May, 1747.

No. 2. An invoice of the wheat, in which it is said to be for the account of Lichtenfeldt, proprietor of the ship.

No. 4. A French pass.

26th May, 1747.

The master, Jacob Horn, gave in a claim for the ship, as being Swedish property, and for freight; but did not claim the cargo.

DE VROW  
ANNA MARIA.  
1747.  
June 20.

So the only question is, whether the ship is subject to condemnation.

*Dr. Simpson*, with me, for the captors.

*Dr. Paul*, for the claimers.

By the treaties, nothing but contraband goods and enemies' property is to be condemned.

*Dr. Jenner*, same side.

*Dr. Paul's* argument for the claimers.

The master's oath of the property is always a sufficient evidence, if there is not a contrary proof.

The captain has shown himself an honest man, and has fairly discovered the whole.

No *mala fides* in him.

N.B. *False bills of lading*.

*Fredericus Secundus*.<sup>1</sup>

*Treaty with Cromwell*, 11th April, 1654, art. 11.<sup>2</sup>

*Treaty*, 17th July, 1656, art. 2.<sup>3</sup>

Wheat is not useful for war, *uti est*.

*Treaty*, 1661<sup>4</sup>, Art. 11. Ships lent, means ships of war.

*Dr. Jenner*, same side.

Insisted, 1st, that the ship is not Swedish.

<sup>1</sup> *Vide antè*, p. 109.

<sup>2</sup> Dumont, tom. vi. p. 80.

<sup>3</sup> *Id.* p. 141.

<sup>4</sup> *Id.* p. 384.

DE VROW  
ANNA MARIA.

1747.

June 20.

2nd, that if it is, it is forfeited for carrying contraband.

3rd, that false bills of lading creates a forfeiture.

Wheat may serve to various purposes.

Makes powder and starch.

But supposing it to be contraband, it will not affect the ship; for by the 11th Article of Treaty, 1661, the contraband only are to be prize.

PER CURIAM:

The wheat is not claimed, and must be condemned; and it is certainly provisions, and, within the letter of the treaty<sup>1</sup>, is contraband.

These contraband goods were put on board by the consent and privity of the owners of the ship.

The master, who is a part owner, signed false bills of lading.

I am of opinion both ship and cargo ought to be condemned; and accordingly the Court condemned both ship and cargo.

June 20th, 1747.

*Dr. Paul* moved for two persons, who called themselves agents, that the ship should be delivered to them; but the Court said they would proceed according to the usual course, and decreed the ship to the captain of the privateer on whose monition she was condemned.

## DE EENDRAGHT. GERT DIRKES, Master.

De Eendragt, Gert Dirkes, Master; taken by the Greyhound man-of-war, Thomas Noel, Esq., Commander, and brought to Dover.

I am for the claimer.

This is a Prussian ship, taken on 24th July, 1747, N. S., about three leagues from shore between Gravelines and Calais.

The said ship was put up at Amsterdam as a general ship for freight.

Was laded there by merchants at Amsterdam with pepper, cloves, paint, dyer's wood, bees-wax, flax, callomanco<sup>1</sup>, beer, cheese, sheets of milled lead, barrels of steel, iron hoops, barrels of tin, and other goods upon freight, on account of the laders, who are Dutchmen.

Consigned to be delivered at *Bourdeaux*.

Sailed from the Texel 19th July, 1747, N. S., with a Prussian pass, proper clearances, and other papers.

The ship is the property of Gert Derks, the master, and of Siem Voeders and Lannet Albus of Embden in East Friesland, all Prussian subjects.

17th August, 1747.

The master claimed the ship as the property of himself, and said Voeders and Albus, all Prussians, and the cargo as being the property of Dutchmen and other neutral subjects.

<sup>1</sup> A woollen fabric chiefly manufactured in the Netherlands.

DE  
EENDRAGHT.

1747.

Oct. 5.

Contraband.—  
Milled lead.—  
Proof, want of.  
— Affidavits.—  
Condemned.—  
Freight allowed  
for all but con-  
traband.

DR  
FENNDRAGHT.

1747.

Oct. 5.

Burthen of ship, 26 lasts.

Master, two mariners, and a boy.

170 bills of lading signed, none colourable.

55 bills on board.

No charter-party.

Christoffers, the mate, to the ninth interrogatory says:—

There were on board rolls of sheet lead, flat bars of iron about half an inch thick, iron hoops, iron spikes and nails.

The property in the goods contained in fourteen bills of lading is fully proved by affidavits to be neutral.

But there is no proof of the property of the rest of the goods.

We pray the ship and the goods proved may be restored and freight for the goods condemned.

*Dr. Paul*, for the captor.

Agree they have proved their property in several bills of lading.

Affidavits are not full proof: it ought to be by plea: affidavits can only be received by consent.

*Dr. Simpson*, same side.

If they insist that no part of the cargo can be condemned, we shall insist that they prove their property.

Part of the cargo is contraband, therefore no freight is due.

The Court restored the ship, and so much of the cargo

for which there were affidavits, and condemned the rest of the cargo, and gave freight for all the goods condemned except the milled lead<sup>1</sup>, which he held to be contraband.

December 5th, 1747.

DE  
EENDRAGHT.  
1747.  
Oct. 5.

DE VLUGHT NAA ÆGYPTEN. JOCHE ESGER,  
Master.

De Vlught naa Ægypten, Jocche Esger, Master; taken  
by The Swan man-of-war, Captain Russell.

I am for the captor.

Taken 17th May, 1747, N. S., at sea, and brought to  
Dover. She was seized between Flushing and Middle-  
burgh, off the island of Walcheren, in Zealand.

Is a Dutch ship, and sailed under Dutch colours.

Navigated by the master and two mariners, all Frieze-  
landers.

Burthen 40 lasts.

She is the sole property of Jocche Esger, the master  
who is a Dutchman.

The master swears that she took in her lading at Ham-  
burgh, where the voyage began, was bound first to Havre  
de Grace and afterwards to Rouen in France.

The lading consisted of lead, copper, tin, wax, alum,  
blue, lampblack, linen, cotton, hare-skins, scythes, Nurem-  
burgh toys and quills.

That the several persons in the bills of lading mentioned  
to be the laders thereof were really so, and the master says

DE VLUGHT  
NAA ÆGYPTEN.  
1747.  
Oct. 8.  
Contraband.—  
Lead.—Dutch  
Treaty, 1674.—  
Instructions.—  
Character of  
ship.—Want of  
proof.—Cargo  
partly con-  
demned.—Ship  
restored.—Just  
cause of seizure.  
—Captor's  
costs refused.

<sup>1</sup> Vide *Juffrow Susannah*, ante, p. 71.



DE VLUGT  
NAA EGYPTEN.

1747.

Oct. 8.

he was told by them they were the owners thereof, *and it was for their own account and risk*; that the laders are great merchants at Hamburgh, and the said goods were to be delivered at Havre de Grace and Rouen.

82 bills of lading were signed for the goods.

They were not colourable; and there were not any bills of lading signed which were of a different tenor with those on board.

No charter-party.

*Ship's Papers.*

1. Bill of sale.

From No. 2. to No. 27. inclusive, bills of lading, all of them for the account and risk of Hamburgers or other neuters.

No. 28. The master's burgher brief.

No. 29. Dutch pass, dated 7th March, 1747.

No. 33. Manifest of the cargo.

The ship sailed from Hamburgh April 30th, 1747, *n. s.* Was taken 27th May, and carried into Flushing; stayed there till 29th May, and arrived at Dover 1st June, 1747.

22nd June, 1747. Jocke Esger, the master, gave in a claim on his oath for the ship, freight, primage<sup>1</sup>, damages, demurrage, and expenses, as being his sole property.

The master in his affidavit to the claim swears that he sailed in ballast from Ostenahorn, in Friesland, on 23rd March, 1747, *n. s.*, for Hamburgh, to get a loading for

<sup>1</sup> Primage, an allowance to master and mariner of from 1*d.* to 6*d.* each pack or bale for loading the same.

some place or other. That soon after his arrival at Hamburg he took in a lading of several sorts of goods which were shipped by divers merchants at Hamburg, who were, so far as he knows, the owners thereof; they requiring this deponent to sign bills of lading for the same, as if shipped for their account and risk. Part of the cargo deponent was to deliver at Havre de Grace, and part at Rouen. The said ship in her passage from Hamburg to Havre de Grace was taken by the Swan.

DE VLUGT  
NAAM EGYPTEN.  
1747.  
Oct. 8.

Deponent on his oath declares, that when the said goods were shipped on board his ship, he did not know or believe that any part thereof were prohibited goods or the property of enemies, but apprehended he was upon a lawful trade, and that all the cargo was free goods and neutral property.

6th July, 1747. A claim was given in on the oath of Luder Millo on behalf of Peter His and others, subjects of Hamburg and other neutral states, for all the cargo, as being the sole property of the claimants, and for all damages and expenses.

*Note.*—Mr. Millo has exhibited thirteen attestations to prove part of the cargo to be neutral property: the twelve first are very full, and the other I think is sufficient to prove the property of Meyer of Petersburg in some barrels of hare-skins.

*Dr. Simpson*, for the claimers.

Laden by various merchants at Hamburg on freight.

A Dutch ship, a fair trade.

N.B. The captors insist that lead is contraband<sup>1</sup>, and as such must be condemned.

<sup>1</sup> *Vide antè*, p. 125.

DE VLUCHT  
 NAAR EGYPTEN.  
 1747.  
 Oct. 8.

*Dr. Simpson.* If lead is privileged by the Dutch treaty, the Court must take notice of the privilege, though the Dutch do not insist on it. The treaty is for encouragement of the Dutch navigation rather than for their trade.

The Hamburgers are doing nothing unlawful in carrying lead.

It is not contraband on board Dutch ships.

*Dr. Jenner*, same side.

The instructions which say lead is contraband do not relate to Dutch ships.

And they do not relate to small quantities but when the main cargo is lead.

*Med-Guds Hielpe*<sup>1</sup>, laden wholly with pitch and tar, and therefore condemned.

Instructions<sup>2</sup> cannot alter the law of nations.

The Court restored the ship; said the captain of the Dutch ship had not acted quite fairly, for he did endeavour to cover the French.

The treaty of 1674<sup>3</sup> was not made for the sake of the trade and navigation of the Dutch, but for the benefit of the English, who were then in peace with everybody, but the Dutch were then at war with France.

Under the circumstances of this case, we must consider this ship was not as a Dutch ship under the treaty, but as a neutral ship only, she had no Dutch goods on board.

The lead must be condemned as contraband, and any other goods, the property of which is not proved, must be

<sup>1</sup> *Vide post*, p. 191. and p. 60.

<sup>2</sup> As to force of the King's instructions, *vide* 2 Rob. 202., Edw. 604.; arguments in case of the *Snipe*, p. 119. 122.; and Life of Sir James

Mackintosh, vol. i. p. 318.; Hall, Amer. Law Journal, vol. i. p. 217.

<sup>3</sup> Dumont, tom. vii. p. 282.; D'Hauterive, tom. vii. p. 14. explan. art. 30. Dec. 1675.; Dumont, tom. vii. p. 319.; D'Hauterive, tom. vii. p. 14.

condemned as enemies' goods, and the rest of the cargo must be restored.

DE VLUGHT  
NAA ÆGYPTEN.

Lead aboard all neutral ships that are not under the privilege of treaties, is contraband.

1747.

Oct. 8.

I am therefore of opinion freight ought to be allowed for all the goods condemned except the lead, for which no freight is due, it being contraband.

Decreed accordingly.

October 8th, 1747.

The Court pronounced just cause of seizure, but would not give the captors costs.

PRINCESSA DE BRAZILS. JOACHIM GONSALVES,  
Master.

PRINCESSA DE  
BRAZILS.

1747.

Oct. 9.

Princessa de Brazils, Joachim Gonsalves, Master; taken by the Greyhound man-of-war, Captain Noel.

Contraband.—  
Planks.—Portuguese Treaty.  
—Property,  
proof of.—  
Ship and cargo  
restored.— Just  
cause of seizure.  
—Captor's ex-  
penses allowed.

I am for the claimers.

Ship taken 29th June, 1747, off the Flemish coast, and carried to Dover.

She is English built.

Navigated by the master and 11 mariners, all Portuguese but two, who were Spaniards, and the mate, who was an Irishman, and a German passenger.

Burthen 125 tons, and had 6 guns.

At the time she was taken she was bound from Amsterdam to St. Sebastian with various sorts of goods as mentioned in the bills of lading, excepting some things

PRINCESSA DE  
BRASIL.

1747.

Oct. 9.

belonging to the master, for which there is no bill of lading.

The goods were all put on board at Amsterdam by a broker on freight, who (as the master swears), told him they belonged to Dutch merchants wholly, and deponent believes it to be true.

The goods were to be delivered at St. Sebastian to the persons they were consigned to, according to the bills of lading.

There was no charter-party.

The ship is the sole property of Andreas Francisco Vivas, a Portuguese merchant, who lives at Lisbon.

The captors have examined the master and second mate, who prove the above facts.

11th July, 1747, Joachim Gonsalves, the master, gave in a claim on oath.

Claims the ship as being the sole property of Andreas Francisco Vivas, a Portuguese, and the cargo as laden in a Portuguese ship, and for damages and costs.

In his affidavit annexed to his claim, he swears that this ship about 24th March, 1747, *N. S.*, sailed from Lisbon, destined to Viana in Portugal with a lading of salt, but, meeting with contrary winds, deponent carried the ship and lading to Bilboa in Spain, and there sold the cargo, and took in another lading consisting chiefly of sugars and mahogany planks, sailed with the same from thence to Amsterdam, where the ship arrived about the 9th May, *N. S.*; there took in another cargo consisting chiefly of beeswax, train or fish oil, cocoa, cinnamon, and deal boards, and of no contraband goods whatever for St. Sebastian.

In her voyage from Amsterdam to St. Sebastian with

said cargo, she was taken off of Ostend on 29th June, 1747, N. S., and brought to Dover by the Greyhound man-of-war on the 1st July, 1747, N. S., notwithstanding deponent was provided with and produced a regular passport from the King of Portugal, and a certificate from the British Consul at Lisbon, that she was a Portuguese ship.

PRINCESSA DE  
BRAZILS.  
1747.  
Oct. 9.

*Ship's Papers.*

There are a great many clearances for the goods given at the Custom House at Amsterdam, and there are a great number of bills of lading, most of which do not specify on whose account the goods are shipped.

No. 24. is a receipt for 200 planks, 19 feet long, received on board this ship.

No. 64. for 400 planks of 2 and 2½ inches thick, and 20 feet long, and 60 ditto of pine tree, from 3, 3½, 4 and 5 inches thick, and 24 feet long, to be delivered at St. Sebastians, at the order of Don Luis Michel.

No. 97. An agreement between the owner Vivas and the master, dated 26th October, 1742.

No. 98. Bill of sale of the ship, dated 22nd July, 1741, to Vivas.

No. 99. A passport from the Spanish Consul at Amsterdam, dated 9th June, 1747.

No. 100. Roll of equipage.

No. 102. A pass for Portugaletta to sail to Amsterdam, dated 24th April, 1747.

No. 103. A certificate that the goods therein named are not English.

No. 104. Certificate for other goods: there are many certificates of the same kind, and I think for most of the cargo.

No. 133. A manifest of the cargo.

PRINCESSA DE

BRAZILIA.

1747.

Oct. 9.

No. 134. Letter of attorney from Vivas, to take possession of the ship.

No. 147. A letter of instructions from the owner to the captain, material for the claimers.

No. 149. A Portuguese passport for that voyage, dated 13th March, 1747, expired.

No. 151. Justification of the ownership of the ship at the petition of Vivas, declared to be his, dated 6th March, 1747, attested by Mr. Castres, the British Consul at Lisbon.

*Dr. Paul*, for the captors.

Portuguese treaty privileges only from ports of Portugal.

*Vlucht naa Ægypten*<sup>1</sup>, held so as to a Dutch ship coming from Hamburgh.

*Nostra Signora de Penha de Franca*<sup>2</sup>, Portuguese ship, going from Ireland with beef to France. Cargo condemned.

N.B. A false clearance for Lisbon no proof of Dutch property.

The planks are contraband.

*Dr. Simpson*, same side.

Claim of privilege of the ship a tacit admission. The goods are Spanish property.

Bills of lading not strict evidence.

300 planks do not appear whose property they are.

Treaty with Portugal does not declare what is contraband, cannot be understood to give them leave to carry contraband. This is a ship merely upon freight, and therefore not privileged.

<sup>1</sup> *Vide antè*, p. 125.

<sup>2</sup> *Vide antè*, p. 90.

*Dr. Jenner contra*, for claimers.

PRINCESSA DE  
BRAZILS.

1747.

Oct. 9.

PER CURIAM.

Clear the ship is Portuguese. Was trading originally upon Portuguese account: went to Amsterdam with a cargo.

A Portuguese ship may lawfully trade from Amsterdam to St. Sebastian.

Question, whether this cargo is enemy's property.

The captors are to make proof of enemy's property from the preparatories and ship's papers.

I do not see from them any proof that this cargo is Spanish, or any other suspicion than that it was going to Spain.

The planks and deals do not appear to be for shipping, or to be contraband.

In the treaty there are no words limiting the Portuguese to trade only from their own ports.

I think this cargo is under the privilege of the treaty of 1654<sup>1</sup>, and I do not think there is any proof that it is enemy's property; and therefore I decree the ship and cargo to be restored, and pronounce just cause of seizure, and give the captor his expenses.

Oct. 9. 1747.

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DE MARIA. DYRK TYALFSY, Master.

DE MARIA.

1747.

Oct. 9.

De Maria, Dyrk Tyalfsy, Master; taken by the Sandwich, Captain Gaul.

Contraband.—  
Dutch Treaty,  
1674.—Ship  
restored.—  
Freight refused.

<sup>1</sup> Dumont, tom. vi. p. 82., D'Hauterive, tom. vii. p. 97.



DE MARIA.  
 1747.  
 Oct. 9.

I am for the captors.

This is a Dutch ship, was taken on 25th June, 1747, o.s., and carried to Falmouth.

Nine mariners, 120 tons burthen.

She was, when taken, proceeding from St. Sebastian to Carthagena, in Spain; the voyage began at St. Sebastian, and was to have ended at Carthagena.

Mynheer Sirp Oilkama is the owner of the ship, who is a Dutchman by birth, and lives at Amsterdam.

The lading was all put on board at St. Sebastian, and consisted of iron, iron spikes, hoops, and three small bales of goods, and an hogshead of cider; there are twenty-one casks of the iron spikes of the weight of 1300 pounds, and from that to 1500 pounds weight each.

They were laded by Jean Nicholas Mendineta, who lives at St. Sebastian, and the owner of it was Don Luis Michell, who now lives and carries on trade at Amsterdam.

The said cargo was to be delivered at Carthagena, and the master believes for the account of the said Luis Michell.

They were to be delivered to his order, which he was to send to deponent at Carthagena, but deponent does not know to whom they really belonged.

The bills of lading are true.

She was taken between St. Sebastian and Bilboa.

There is a charter-party.

John Butler, 4th witness.

8th interrogatory. Says he believes the cargo was Spanish property, and that it was fit for ships.

No. 1. A bill of lading material.

5th August, 1747.

A claim was given for the ship, freight, &c., as being the sole property of Sirp Onchama, a Dutchman.

No claim was given for the goods, and on 18th August they were condemned as enemy's property.

DE MARIA.

1747.

Oct. 9.

The question now is, upon condemnation of the ship for having carried contraband.

*Dr. Simpson*, for the claimers.

A Dutch ship fully proved.

The charter-party is made on behalf of Michell, a Dutchman, and the bill of lading is so; therefore it does not appear that the captain knew it to be enemy's property.

For if they had been Dutch they would not have been contraband.

*Dr. Jenner*, same side.

By 7th *art. of Treaty of 1674*, a ship is not to be condemned because she has contraband on board.

The master acted fairly so far as he knew, for if they had been Dutch, he might by the treaty have carried them to Carthage.

PER CURIAM:

The ship must be restored by virtue of the treaty of 1674<sup>1</sup>, for by that treaty a Dutch ship is not forfeited for carrying contraband.

The only question is upon freight.

The cargo has been condemned as Spanish property. The captain, I think, has been upon an unfair trade, and therefore I pronounce he is not entitled to freight.

Oct. 9. 1747.

**THE  
EBENEZER.**

1747.

Oct. 9.

Contraband.—  
Destination discretionary.—  
Growth of  
neutral country.—Ship and  
cargo restored  
on security to  
sell in England.  
—Just cause  
of seizure.—  
Captors' costs.

**THE EBENEZER. AASMUND WALLESVERD, Master.**

The Ebenezer, Aasmund Wallesverd, Master; taken by the Chesterfield privateer, Gilbee, Commander.

I am for the captor.

A Danish ship, laden with a Danish cargo, viz., spars, boards, and timber, and 285 bars of iron, which are contraband goods, and was going to Brest, a French port.

Therefore prayed that the ship and goods should be condemned.

The master is a part owner of both ship and cargo, and the other two owners of the ship are also the owners of the rest of the cargo, and were privy to the voyage.

*Dr. Paul*, for the claimers.

We pray restitution of ship and cargo, with costs.

*Dr. Jenner*, same side.

There is a paper on board from the magistrates in Denmark, which says these goods are not contraband.

The goods are all of the growth of Norway, and therefore, in a Danish ship, not contraband.

They had no intention to assist the enemy, for they were bound either to England or France.

**PER CURIAM.**

This ship was taken on 9th June, 1747, O. S., between Dover and Blackness, in the Mid Channel.

The King, by his Instructions, does not intend to hurt his allies, but to prevent them aiding his enemies.

Confiscation of ship and cargo is the highest punishment, and only to be inflicted for a plain attempt to assist the enemy.

They were only upon a trading voyage with the growth <sup>1</sup> of their own country.

The papers show she was to go either to England or <sup>2</sup> France; from the examination it appears she was then intended for Brest, as the best market, but she does not appear to have been specially destined to Brest.<sup>3</sup>

Did not design to assist the enemy.

Part of the cargo is for shipping, part not.

It would be hard to confiscate this ship and cargo, as her destination to France was not certain.

I therefore decree this ship and cargo to be restored, and security to be given by the owners to sell the cargo in England; and I pronounce just cause of seizure, and give the captors costs.

Oct. 9. 1747.

THE  
EBENEZER.  
1747.  
Oct. 9.

SANTA BOA VENTURA. PEDRO DOS SANTOS,  
Master.

Santa Boa Ventura, Pedro dos Santos, Master; taken by the Postilion, Privateer, John Morgan, Commander,  
And brought to Topsham.

I am for the claimants.

SANTA BOA  
VENTURA.  
1747.  
Dec. 12.  
Contraband.—  
Tar, ship  
timber, rosin.—  
Enemy's pro-  
perty.—Voy-  
age from port  
to port of ene-  
my.—Condem-

<sup>1</sup> As to growth or produce. *Vide antè*, p. 49.

<sup>2</sup> As to discretionary destination. *Vide antè*, p. 50.

<sup>3</sup> But *vide Twende Brodre*, 4 Rob. 38.

SANTA BOA  
VENTURA.

1747.

Dec. 12.

nation of ship  
timber and tar  
as contraband,  
and part of  
rosin as ene-  
my's property.  
—Ship and re-  
mainder of  
rosin restored.

This is a Portuguese ship, laden with rosin and tar at Bayonne, bound from thence to Nantz.

7th October, 1747, N. S. ; was taken in her passage to Nantz, about 5 leagues from thence.

19th November, 1747, a claim was given by the master, on behalf of Manuel Moreira de St. Paio, a Portuguese merchant, at Lisbon, the sole owner of the ship, for the ship and for *all* the merchandize, as being laden in a Portuguese ship, and being also the property of the said St. Paio, except some small ventures belonging to the captain and some of the mariners.

She had on board a proper pass, dated 3rd July, 1745 since which time, to the capture, she has been on a trading voyage for the account of the owner.

The bill of lading mentions the whole cargo to be shipped by Mr. Betrie, for the account and risk of the owner of the ship, Manuel Moreira de St. Paio.

The lading is consigned to the captain, paying freight 30 livres per ton, and 10 per cent. average.

And in the clearance, No. 5., it is said that Mr. Betrie has shipped *for his own account* 50 thousand of rosin and 75 barrels of tar,

And the rest by commission.

N.B. The whole cargo consists of 450 casks of rosin, 25 hds. of tar, and 100 barrels of ditto.

The proctor for the captor in his act only prays the goods to be condemned as contraband, and as property of the enemy, but does not pray the ship to be condemned.

Nine mariners on board, 6 of them Portuguese, and 3 Spaniards.

To 6th Interrogatory, the master says he had no interest

in the cargo, but he had a private venture on board, consisting in *heavy wood for halser holes of ships and sheaves for blocks and other uses; but the particular name of the wood he cannot tell, but such wood was not fit for the fabrick of ships*; that it was worth about 80*l.*; two barrels of wine, worth above 17*l.*; and 4 sacks of liquorish root, worth about 4*l.* The mariners had on board upwards of 4000 weight of rosin, worth about 6*l.*

Ship's burthen about 90 tons.

8th Interrogatory. The voyage began at Lisbon, in July, 1745; sailed from thence in ballast to St. Uval, in Portugal; there took in a lading of salt, for St. Paio's account, and carried it to Gyon in Spain; in September following he went from thence, in ballast, to Port Lewis, and from thence went to divers other places in France, Spain, and Portugal, at which he took in and delivered various cargoes, all for the account of his owner, St. Paio. His present lading, consisting in rosin and tar, was laden at Bayonne, by Mr. Betrie, agent for St. Paio, for whose account and risk the said cargo was taken on board; and if he had arrived at Nantz, believes he should have found orders there where he should have gone to next: he was all the aforesaid time trading on St. Paio's account.

He signed two bills of lading for the cargo; one was on board, and the other he sent to St. Paio, both of the same tenor: there was no charter-party.

No. 6. is the passport, dated the 3rd July, 1745, to go from Lisbon to St. Uval, to take in salt, and carry it to Viana, from thence to return to Lisbon with a lading of pork, linen, and other goods. This pass to be in force only for this voyage.

N.B. The ship went two or three times to Lagos, but has never returned to Lisbon.

SANTA BOA;  
VENTURA.  
1747.  
Dec. 12.

SANTA BOA  
VENTURA.  
1747.  
Dec. 12.

No. 7. A bill of sale of the ship.

No. 1. Bill of lading dated at Bayonne, 22nd *April*, 1747.

N.B. That date must be wrong, for the ship did not arrive at Bayonne till 25th August, 1747; and the master swears the lading was taken in in September.

There is no question but that the ship is Portuguese, but the dispute is whether the cargo of tar and rosin be not contraband, and part of it French property.

*Dr. Jenner*, for the captor.

Admit this is a Portuguese ship.

From 1745 to this time has been trading from port to port.

At Bayonne took in a lading of rosin and tar for Nantz; cargo consigned to the master paying freight.

Three of the crew Spaniards, who have some share in the rosin.

We insist that all the tar is contraband, and not protected by the treaty with Portugal.

2nd. That part of the rosin is Mr. Betrie's, a Frenchman.

3rdly. That the heavy wood is also contraband.

1689. The *Pyed Crow*, a Dutch ship upon freight from one French port to another.

Held the goods were to be condemned, for that was not within the treaty.

*Dr. Smallbroke*, same side.

If contraband is free on board Portuguese ships, it will be of dangerous consequence to this country.

PER CURIAM.

Portuguese ships have a right of trading to the enemy's ports.

It is very seldom that Portuguese ships are trading upon freight as carriers only.

What is contraband in its own nature, is so on board all ships.

Tar<sup>1</sup> on board a Portugal ship is contraband, as well as in a Swedish or Danish ship.

And it is equally contraband when carrying from one French port to another, as when carrying from a foreign country to France.

The heavy wood is of use in shipping, and comes under the nature of contraband as part of the equipage of ships.

And the rosin cleared for Betrie's account, I must look on as his property.

And therefore I condemn all the tar and the heavy wood, and so much of the rosin as was cleared for Betrie's account, and restore the ship and the rest of the rosin that was for Portuguese account.

December 12th, 1747.

SANTA BOA  
VENTURA.

1747.

Dec. 12.

LE MARS. HENDRICK VISSER, Master.

Le Mars, Hendrick Visser, Master; taken by the Cumberland, John Mauyer, Commander, and the Hope, John Ahier, Commander, and brought to Guernsey.

I am for the captors.

LE MARS.

1748.

March 26.

Contraband.—  
Salt.—Con-  
demned.—Ship  
restored with-  
out freight.

<sup>1</sup> *Vide ante*, p. 60.



LE MARS.

1748.

March 26.

This is a Swedish ship, took in a lading of coals at Amsterdam, proceeded therewith to Rochelle.

Went from thence in ballast to Sendre, and took in her present lading consisting of salt, with which she was proceeding to Dunkirk.

25th August, 1747, o. s., she was taken in the Bay of Biscay.

The lading consists of 245 muids<sup>1</sup> of refined salt.

Eleven men including the master, all Swedish subjects, but the mate, who is Dutch.

Burthen 240 tons, built in Finland.

The master and several others, all Swedes, are owners of the ship.

And there was a bill of sale on board.

The ship was let to Mr. Theodore Isaac Schutten, merchant at Amsterdam, by charter-party for eight months for 1080 florins per month, and 50 florins per month hat money.

Mrs. Schellebeck and son, who live at Rochelle, were the laders of the salt, which was to be delivered at Dunkirk or elsewhere, to the orders of Mr. Theodore Isaac Schutten of Amsterdam, who is the owner of it.

Signed three hills of lading, not colourable.

Ship was taken about ten leagues from Belle Isle, in the Bay of Biscay.

N.B. The commissioner at Guernsey has certified that the witnesses refused to sign their depositions because he would not first give them copies thereof.

The charter-party is dated 20th June, 1747, by which it appears that this ship was entirely taken into the ser-

<sup>1</sup> Mudde, a Dutch measure equal to 2½ imperial bushels.

vice of Schutten, was to go on freight to whatever parts he should direct, and that he was to have the freight so carried, but she was not to carry contraband goods.

LE MARS.  
1748.  
March 26.

No. 6. is a letter from Schutten, which shows the salt to be his.

No. 7. is a certificate that Schellebeck and son have made oath that she lades the salt by order of Schutten, and she knows not that any other person has any interest in it.

No. 8. Bill of lading says for account and risk of Schutten.

26th September, 1744. The master gave a claim for the ship on his oath as being the property of himself and others, all Swedes, and for freight, &c.

7th October, 1747. Abraham De Reimer, of London, gave a claim on his oath on behalf of Theodorus Isaac Schutten of Amsterdam, merchant, for 245 muids of refined salt, laden on board the Dutch ship Mars, as being the sole property of said Schutten.

N.B. In De Reimer's affidavit she is also called a Dutch ship.

On 17th October, 1747, Theodorus Isaac Schutten made a very full affidavit at Amsterdam, which is exhibited in the cause, that the salt was at seizure and now is his sole property.

N.B. The ship is clearly Swedish, and the cargo Dutch property; but the question is, whether the salt is not contraband and to be confiscated going to a French port.

Salt was determined to be contraband in the case of the *Jonge Tobias*, which is a case in every circumstance parallel to this.

LE MARS.

1748.

March 26.

*Dr. Simpson*, for the claimers of the cargo.

The claimer did not think he was doing anything wrong for in the charter-party he stipulated that no contraband goods should be laden on board.

Salt is *promiscui usus*, and therefore not contraband.

Pray the Court to reconsider the case of the *Jonge Tobias*.

Apprehend a Dutchman may trade in any goods that are not declared by treaty of 1674 to be contraband.

*Dr. Pinfold*, same side.

PER CURIAM.

This is exactly the same case as the *Jonge Tobias*.

Salt was then determined to be contraband, and I think the same now.

And being on board a Swedish ship is not privileged as it would have been on board a Dutch ship.

I must take this Dutchman to be in the same case as if he was a Swede.

I therefore give the same decree as I did in the case of the *Jonge Tobias*, and pronounce the salt to be contraband and condemn it as such, but restore the ship without freight.

March 26. 1748.

DE  
PROVIDENTIA.

1748.

March 26.

DE PROVIDENTIA. HANS LORENS FESTER, Master.

De Providentia, Hans Lorens Fester, Master; taken by the Hawk, Thomas Holman, Commander.

I am for the captor.

Taken 7th November, 1747, at sea, off Cape Antifer, in France. Is a Danish ship, the property of Gierdt Jacob and Anders Dischington, of North Bergen, in Norway.

Eight mariners and a supercargo named Lydoig Henrick Kennemand, besides the master, were on board, all Danes but the supercargo, who is an Hanoverian, but hath resided at Bergen for fifteen years.

Burthen, 80 tons. Was built at Hull. Taken by the French. She sailed from Bergen to Stockholm with her-rings and cod.

There took in part of her present cargo for France, and then was to have got a freight for Lisbon, and then taken in a lading of salt, and returned to Bergen.

Her present lading was taken in at Stockholm and Calmar, which consisted of 378½ barrels of tar, 14 barrels of pitch, 48 dozen of deals, and about 100 broad paving stones.

She was laded by Lydoig Kennemand, the supercargo, who had 283½ barrels of tar, 8 barrels of pitch, and 29 dozen of deals; and by Gierdt Dischington, who is one of the owners of the ship, and who had 66 barrels of tar, 6 barrels of pitch, and 14 dozen of deals; and by Benjamin Angell, who had 29 barrels of tar and 5 dozen of deals; and who are all Danes and merchants at Bergen, and are the owners thereof.

18 barrels of tar and 100 paving stones belong to the master, and 18 barrels of tar to the mate.

With this lading she was bound to Havre de Grace, where it was to be sold on account of the said owners, or at some other port in France.

Three bills of lading were signed, made out for Lisbon,

DE  
PROVIDENTIA.

1748.

March 26.

Contraband.—  
Pitch, tar,  
deals.—Cannon  
concealed.—  
Colourable  
papers.—Pro-  
perty of same  
owner.—Cargo  
condemned.—  
Ship restored.  
—Freight re-  
fused.

De  
**PROVIDENTIAL.**  
 1748.  
 March 26.

which were colourable, with design to secure the lading against the English.

There is a charter-party.

This ship was unlivered, and six cannon (1-pounders), with new carriages, were found concealed in the hold, under the lading.

The master has sworn that these guns were for the ship's use, and were not to be sold.

7th Dec. 1747. The master claimed the ship and cargo as being all Danish property.

Ludewig Hendrick Kenneman has sworn to his property in 29 dozen of deal boards.

*Dr. Paul*, for the claimers.

A small quantity of deals and the cannons ought to be restored.

The ships not condemned in several cases.

*Christiana Margareta*, 1702, laden with contraband ; ship restored.

1693. *Concordia*, laden with wheat and deals ; the deals restored ; affirmed by the Lords.

15th March. *Elizabeth*, laden with deals and spars ; ship restored.

The *Jacob*, eleven barrels of powder ; held to be for the ship's use, though found in the hold.

*Dr. Hay*, same side.

Very small quantity of deals ; the paving stones cannot be for ballast.

PER CURIAM.

No difficulty in this case.

No doubt of the pitch<sup>1</sup> and tar being contraband.

The deals were put on board by the owners of the pitch and tar, and must be considered as contraband, being blended therewith, and belonging to the same<sup>2</sup> persons.

The cannon must be deemed to be for merchandize, and therefore I condemn all the cargo and the cannons, but restore the ship and the paving stones, which were for ballast, but without freight.

March 26. 1748.

DE  
PROVIDENTIA.  
1748.  
March 26

DE PRINTZ CHRISTIAN. JAN ANDRIES SIMON-  
SON, Master.

DE PRINTZ  
CHRISTIAN.  
1748.

De Printz Christian, Jan Andries Simonson, Master; taken by the Culloden, Boxell, Commander, and brought to the Downs.

March 31.  
Contraband.—  
Ship timber.—  
Presumption  
against asserted  
destination.—  
Ship and cargo  
restored.—Just  
cause of seizure.  
—Captors' ex-  
penses allowed.

I am for the captors.

22nd July, 1747, N. S., she was taken between Dover and Calais.

Burthen, 240 tons, thirteen men.

Lading, 358 pieces of fir baulks, 1200 pipe staves<sup>3</sup>, 420 clapboards<sup>4</sup>, 3½ fathoms of split wood, and 3 casks of gunpowder, containing 3 cwt., which were shipped by Flootz and Dirksen, who live at Riga.

Except the gunpowder, which was for the ship's use, and was shipped at Elsinour, the ship and cargo are the

<sup>1</sup> Pitch and tar, *vide antè*, p. 60.

<sup>2</sup> *Vide antè*, p. 74.

<sup>3</sup> *Vide* p. 95.

<sup>4</sup> *Id.*

**DE PRINZ  
CHRISTIAN.**

1748.  
March 31.

property of the master and others, Danish subjects, living at Flensburgh.

One bill of lading for the cargo, not colourable.

No charter-party.

The goods were to be sold at Dublin or elsewhere in Ireland, where he could get a good market.

Jan Boyser, the mate, says, the bill of lading is false, because the goods are mentioned therein to be shipped at Flensburgh in Denmark, whereas they were put on board at Riga.

Also says that his journal, marked A., is false, in regard to the place of lading, and which he did so by the direction of the master.

*Ship Papers.*

No. 1. Bill of lading, dated at Flensburgh, June 12. 1747, in which the master acknowledges to have received on board his ship, then lying ready at Flensburgh to sail for Ireland, where his place of unloading shall be, of Jans Iveson Loyt, 340 baulks, 72 shocks<sup>1</sup> clapboard, and 32 dozen pipestaves, to sell the same in Ireland, being for the account of the owners of the ship; and therefore pay no freight.

20. is a pass to go to Ireland.

28th August, 1747. The master, on his oath, claimed the ship and cargo as being the sole property of himself and others, Danish subjects, and claimed costs and damages, &c.

18th August, 1747. The owners made oath of their

<sup>1</sup> *Vide* p. 95.

property in ship and cargo at Flensburg, and that she was to sail to Ireland.

DE PRINTZ  
CHRISTIAN.

1748.

March 31.

16th March, 1747. Henry Elhers, their agent, made affidavit that the Commissioners of the Customs had admitted the cargo to be landed.

N.B. The ship and cargo were delivered to the claimers on bail.

The ship and cargo clearly appear to be Danish property, but the question is, whether the cargo would not be contraband, if going to France, and whether it can be supposed she was going to Ireland, when by 12 Car. 2. c. 18. sect. 8. she and her goods would have been forfeited, as she is a Danish ship, and was laden at Riga.

This is exactly the same question as in the case of *De Twee Trarans*.

In this case the Court restored the ship and cargo, and pronounced just cause of seizure, and gave the privateer his expenses.

March 31. 1748.

DE VERGULDE PUT. YSBRANT CORNELIS, Master. DE VERGULDE PUT.

De Vergulde Put, Ysbrant Cornelis, Master; taken by the *Eagle*, Bazeley, Commander, and brought to Dover.

1748.

April 30.

I am for the captor.

Dutch ship, the property of Olphert Pet, Jan Van

Contraband.—  
Suspicion of.—  
Dutch Treaty.  
—Ship and  
cargo restored.



DE VERGULDE  
PUT.

1748.  
April 30.  
—Just cause of  
seizure.—Cap-  
tors' expenses  
allowed.

Volenhoven, Jacob De Flines, and Ysbrant Cornelis, all Dutch subjects.

Taken 25th August, 1747, N. S., at sea, about eight leagues from Flushing, where she was first carried, and then brought to Dover.

Six mariners and a boy, and fourteen or fifteen passengers.

Built at Saardam, in Holland.

Burthen 50 lasts.

Laden at Amsterdam with *cocoa, oil, pepper, cloves, cinnamon, sugar, tobacco pipes, wax, earthenware, tobacco, linen, snuff, linseed, cheeses, and other goods.*

Sailed from Amsterdam on 22nd August, 1747, N. S., bound to Bayonne, where the voyage was to have ended.

Had no charter-party, but was proceeding on freight as a general ship.

The master says he does not know the laders or owners of the goods, or to whom consigned, except by his manifest and bills of lading, and except some tobacco pipes, which belonged to himself.

146 bills of lading were signed for the goods, not colourable, and none of different tenor.

Forty-seven on board.

Had a common Dutch pass on board, dated 11th August, 1747.

A Turk's pass, clearances, a manifest, and all the proper and necessary papers.

Among the ship's papers there is one marked B., which is a petition from the master to the Admiralty of Amsterdam, representing that having received on board lead, shot, &c., and finding the said goods to be now prohibited by the Placaart<sup>1</sup> of their High Mightinesses, the bills of lading

<sup>1</sup> Plakkaart, an edict or proclamation.

thereof being signed already by him, he might have leave, in order to fulfil his engagement, to export the same for Bayonne.

De VERGULDE  
PUT.  
1748.  
April 30.

The Admiralty refused to grant this request, and there are several receipts from the owners of these goods, that they have been unladed, and delivered back to them.

But the same owners have laden on board several casks of merchandizes, which are suspected to be the same contraband goods concealed.

N.B. The witnesses in preparatory were not examined till 12th October.

17th November, 1747. The master gave in a claim on oath for the ship, as being the property of Olphert Pet and others, Dutch subjects, and for the goods, as being laden in a Dutch ship, and for demurrage, damages, and expenses.

*Dr. Simpson*, for the captors.

*Dr. Paul*, for the claimers.

A Dutch ship, laden with various goods on freight.

Bound to Bayonne.

With all proper and necessary documents.

Had taken contraband on board, but the Admiralty would not allow him to carry it, and so they were delivered out.

A ship of great value; has been detained ever since August.

No part contraband, and therefore we are entitled to restitution, with costs and damages.

DE VERGULDE  
PUT.

1748.

April 30.

*Dr. Jenner*, same side.

We rely on Treaty 1674.<sup>1</sup>

The contraband were delivered back, and receipts given for them.

Clearances and bills of lading for every parcel of goods on board, and a manifest.

The cocquets show there were no contraband goods.

*Dr. Simpson*, for captors.

Tobacco on board cannot go to France but for the use of the farmers general.

*Dr. Paul*, for the claimers.

A Dutch ship, with every proper document.

Did imprudently take contraband goods on board.

All landed again.

*Santa Rosa*, taken coming home<sup>2</sup>; restored, though she had carried contraband.

Cocquets<sup>3</sup> only necessary when going into an enemy's port.

Pray costs and damages.

*Dr. Jenner*, same side.

Should have dismissed this ship on showing passport.

They admit it to be Dutch property.

PER CURIAM.

The captors might have been forced by the claimers to have proceeded to adjudication sooner.

<sup>1</sup> *Vide anti*, p. 128.

<sup>2</sup> Ship on return voyage not generally liable. *Imina*, 3 Rob. 168. But if sailed on outward voyage under false papers, liability to confiscation continues. *Christianberg*, 6 Rob. 381.; *Stewart*, 47.

<sup>3</sup> Custom-house warrant given on entry of goods for exportation in evidence of their having paid duties or being duty free.

Appears to be a Dutch ship.

Some of the laders endeavoured to have carried contraband, and would have done it, as appears by his petition, on board, if he had not been in danger of forfeiture by virtue of the placart.

This fact gives suspicion that there may be still contraband goods on board.

Especially since the same laders have goods on board under the general description of merchandizes.

This, I think, gives good ground of suspicion to the captors, and will justify the seizure.

I therefore restore ship and cargo, and pronounce just cause of seizure, and give expenses to the captors.

April 30. 1748.

DE VERGULDE  
PUT.  
1748.  
April 30.

BRIGITTA CATRINA. JAN ANDERSON, Master.

Brigitta Catrina, Jan Anderson, Master; taken by the Winchelsea man-of-war, Henry Dyve, Esq., Commander.

I am for the captors.

*Dr. Simpson*, for claimers.

A Danish ship, built at Arundall.

Taken 6th May, 1748, n.s.

Seven mariners, all Norwegians.

The master owner in half of the ship, and had some deals on board of twelve and double twelve ells.

Laden with barks, timber, and deals.

BRIGITTA  
CATRINA.  
1748.  
June 28.  
Contraband.—  
Ship timber.—  
Growth of  
neutral coun-  
try.—Notifica-  
tion.—Equip-  
age.—Cargo  
condemned.—  
Ship restored  
without freight.

BRIGITTA  
CATRINA.  
1748.  
June 28.

Bound from Arundel to St. Martin's, on freight, or elsewhere in France.

Burthen 42 tons.

Lading — 32 dozen and 8 pieces of short balks.

300 double boards,

10 double,

24 single,

1000 staves,

8 pieces of long balks.

Hans Jacobsen, of Arundel, the owner and lader of cargo.

Jan Petersen, the master, and Elizabeth Tyge Pederson, are owners of the ship.

No charter-party.

*Dr. Paul*, for the captors.

*Dr. Simpson*, for claimers.

The officers of customs in Denmark would not have cleared out this cargo for France if they had thought them contraband ;

Nothing is contraband by the laws of nations but what is *apta per se bello*.

This cargo is not equipage for shipping.

*Dr. Jenner*, same side.

Argument on the other side founded on a *petitio principii*.

*Elizabeth* very different from this case.

Not adapted for building of ships, nor by presumption of law is to be deemed to be for shipping.

Quantity material.

In all the cases where the Court has condemned timber

as contraband, there have been affidavits of the dimensions to show they were fit for shipping.

King's Instructions do not extend to this case.

*Fortune de la Mer*<sup>1</sup>, cargo of timber all restored.

Do not build ships at St. Martin's.

If it is not within the letter of the King's Instructions, it is not to be taken to be within the meaning.

Contraband is to be judged by the animus of the lader.

PER CURIAM.

Ship and cargo Danish.

The Court has determined cases similar to this in many instances.

This cargo is the growth of Denmark, but they might have sold it to neuter nations.

They have markets enough besides France.

These spars and balks are of a considerable length, and are useful for shipping.

And as such are to be deemed contraband.

The general word equipage for sea will comprehend these goods.

No doubt but there has been a notification to Denmark that timber is contraband.<sup>2</sup>

I condemn the cargo, and restore the ship without freight.

June 28. 1748.

BRIGITTA  
CATRINA.

1748.  
June 28.

<sup>1</sup> *Vide antè*, p. 33.

<sup>2</sup> *Vide antè*, p. 49.

DE VROUW  
ALIDA.

1748.

July 5.

Contraband.—  
Dutch Treaty.

—Foreign mu-  
nicipal law.—  
Pleading.—

Explanation.—  
Ship and cargo  
restored.—Just  
cause of seizure.  
—Expenses al-  
lowed.

DE VROUW ALIDA. ALBERT DE RUYTER, Master.

De Vrouw Alida, Albert De Ruyter, Master; taken by the Warren, Thomas Stewart, Master, and brought to Dover.

I am for the captors.

This ship was taken 26th July, 1747, N.S., between Dover and Calais.

Is a Dutch ship, belonging to Amsterdam, where she was laded, and consigned to merchants at St. Croix, in Teneriffe.

Proceeding thither when taken.

Among other goods she had on board :—

63 cables or ropes; 10 grapling or small anchors; 24 cables; 200 planks, for shipping, 10 or 12 feet long, and 10 or 12 inches broad, and about 2 inches thick; 84 chests of flax, and several bales, chests, barrels, and packs of goods.

All these goods were shipped at Amsterdam by Messrs. Blote and Knibb, who are the owners of the ship.

The bills of lading bear date in June, 1747, and the Dutch pass is dated 15th of said June, No. 7.

By the Dutch placart, dated 7th July, 1747, it is ordained, that it shall not be lawful to export out of their country *timber for building of ships, hemp, ropes, anchors, &c.*, under penalty of forfeiting said species, and twice the value thereof; and on 31st August, 1747, this placart was more fully explained.

The ship sailed from Amsterdam 24th July, N.S.

Navigated by ten mariners, all neutera.

Between 40 and 50 lasts burthen.  
 New England built.  
 Bills of lading not colourable.  
 No charter-party.

DE VROUW  
 ALIDA.  
 1748.  
 July 5.

*Ship's Papers:—*

No. 12. A clearance for the cables, dated 5th June, 1747,  
 No. 13. Ditto ;  
 but I see no clearance for the planks or the anchors.

5th August, 1747.

Albert de Ruyter, the master, claimed the ship on behalf of Messrs. Blote and Knibb, of Amsterdam, and the cargo, as laden in a Dutch ship.

In the affidavit annexed to it, he swears that Captain Stewart never inspected the ship's papers till after he had put her under sail for Dover.

Notwithstanding the cargo was claimed under the privilege of the ship, Messrs. Blote and Knibb made affidavit, dated 11th August, 1747, that the ship is their property, and the greatest part of the cargo, and have annexed a list of their goods.

The bill of sale of the ship to Blote and Knibb dated 20th April, 1747.

An attestation of Thomas Jacob Teyler, that part of the cargo is his property, dated 10th August, 1747.

12th October, 1747. The master and two others made oath, that the ten pieces of grapling mentioned in the examinations, are nothing but small anchors of about 100lb. each, fit for small boats in fishery.



DE VROUW  
ALIDA.  
1748.  
July 5.

N.B. The placarta are the only foundation on which this capture can be pretended to be justified.

*Dr. Pinfold*, for the claimers.

10th July, the ship was cleared at the Texel.

They will show how the English come to have a right of seizing this ship, supposing she was offending against the Dutch placarta.

*Dr. Jenner*, same side.

Dates material in this case ;

In June, 1747, the lading taken in.

Sailed from Amsterdam on 5th July, arrived in the Texel the 8th.

Detained there by contrary winds till the 24th July, then sailed, and was taken on the 26th July, 1747, N.S.

Passports for all the lading.

Pray costs and damages.

*Dr. Simpson*, for the captors.

They have no cocquets<sup>1</sup> or invoices for these contraband goods, and therefore under the treaty are liable to seizure.

*Dr. Pinfold*, for the claimers.

Question, whether these goods are confiscable ; by the treaty they are not.

This Court cannot take notice of the placart.

*Dr. Jenner*, same side.

In what light can the placart stand before this Court ?

We have denied that any such placart was published.

<sup>1</sup> *Vide antè*, p. 152.

If it could have been taken notice of here, it would have been published in the Gazette.

The *Eendraght* went to Martinico, but held, this Court could not take notice of his having acted contrary to the laws of his country.

These goods are not prohibited, but allowed, by the treaty, and therefore cannot be condemned.

It was the privateer's duty to have let her go on showing her pass.

Taken on the high seas, therefore did not want a clearance.

*Dr. Simpson.*

The *placaart*<sup>1</sup> is a suspension of the treaty as to the lawfulness of carrying these goods, and then by the general law they are contraband, and therefore are *legitima præda belli*.

PER CURIAM.

The goods the captors pray to be condemned are not mentioned in any clearances.

The captors have offered to carry this ship to be adjudged by the laws of Holland.

I think it is a reasonable offer, and desire to know whether the claimers will accept it.

There is before the Court no authentic *placaart*, nor evidence when it was published.

It will therefore be proper to plead the *placaart*, and the time when it was published.

The Court accordingly gave time to plead it, and ordered the captors' offer, viz., to carry the ship to Holland to be

DE VROUW  
ALIDA.  
1748.  
July 5.

<sup>1</sup> *Vide Story, practice, pp. 20. 116.*

DE VROUW  
ALIDA.

1748.  
July 5.

adjudged there, should be set down in the minutes of the Court.

Dec. 17th, 1747.

N.B. The captors have not pleaded the placarta, but the claimers have given in affidavits, to show the ship's papers were falsely translated; that there were not cables and large anchors on board; and they have exhibited a declaration of the States that this cargo is not within the placarta.

So the only question now is, whether the captors shall not have just cause of seizure and expenses.

Upon these new proofs and state of the case, the Court restored the ship and cargo, but pronounced just cause of seizure and expenses.

July 5th, 1748.

MARGARETA  
ELIZABETH.

1748.  
July 7.

Contraband.—  
Beer.—Con-  
demned.—Ship  
and rest of  
goods restored.

MARGARETA ELIZABETH. RASMUS SORENSEN,  
Master.

Margareta Elizabeth, Rasmus Sorensen, Master; taken by the Centurion, Robert Hoskyns, Commander, and brought to Dover.

I am for the captors.

Taken 29th April, 1748, n. s., in Mid-Channel between Dover and Calais.

Danish ship. Madame Fabritius Just, Van Hermest M. Wever, and M. Just Fabritius, sole owners of the ship, live at Copenhagen, and are subjects of Denmark.

A copy of the bill of sale on board.

Built at Lubeck.

Burthen 49 commerce lasts.

Eight mariners and one boy, all Swedes and Danes, but one Bremener came on board at Copenhagen and Amsterdam.

Bound from Amsterdam to Rochelle.

Lading, beer, and other goods on freight.

MARGARETA  
ELIZABETH.

1748.

July 7.

Master says the goods were to be delivered at Rochelle for Holland's account, as he believes, but does not know who were the laders or owners otherwise than by his bills of lading and attestation, and manifest.

18. Bills of lading signed not colourable; none of a different tenor from those on board, which are six.

No charter-party.

The mate says the lading was about 200 hogsheads of beer, bales of pepper, bales of paper, and other casks, bales, and parcels of goods.

Only two of the six bills of lading say for whose account and risk the goods are.

N. B. There are on board affidavits of the Dutch laders<sup>1</sup>, that the goods shipped are their property.

She plainly appears to be a Danish ship, and has all her proper papers on board.

28th April, 1748, the master claimed the ship as being the property of Fabritius and others, all Danes, and claimed the goods as belonging to subjects of the States-General and other neutrals, and claimed costs and damages.

<sup>1</sup> *Vide Juno*, 2 Rob. 122.

MARGARETA  
ELIZABETH.

1748.  
[July 7.

N. B. At the time the ship was taken there was war between France and Holland, and therefore the privateer had reason to believe the goods did not belong to Dutchmen, which will justify the seizure.

2ndly. Beer in a Danish ship is contraband, and we pray it to be condemned.

*Dr. Simpson*, for claimers.

Cleared at the custom-house at Rotterdam.

Every paper clear on board.

Affidavits of property in the goods made by the Dutch owners, and on board.

Danish ships by the French treaties make free goods.

Brought in perhaps on a notion that beer is contraband.

If it is condemned, that is a full satisfaction.

No right to expenses.

Shall not controvert whether beer is contraband or not.

It rather seems to be for luxury.

*Dr. Jenner*, same side.

For the goods in the bills of lading, which do not say for whose account and risk there are attestations and clearances, which show the magistrates have approved the trade.

Beer not contraband.

First, by law of nations.

Secondly, by determinations.

*Eendragt*, Prussian ship, 40 hogsheads of beer, 300 cheeses, held not to be contraband.

All the papers fair.

PER CURIAM:

Danish ship taken while there were reprisals and hostilities between Holland and France.

About 200 hogsheads of beer on board.

In *Eendragt* a small quantity of beer not considered as contraband<sup>1</sup>; but surely beer is in its nature contraband, as being a species of provision.<sup>2</sup>

MARGARETA  
ELIZABETH.  
1748.  
July 7.

The licence from the States is general, to let pass the ship with her goods.

It has been properly urged that the Customs must allow the exportation of all goods not prohibited by the municipal laws; and therefore I condemn the beer as contraband, and pronounce just cause of seizure and expenses, and decree the beer to be valued and taken in as part of the expenses, and decree the ship and the rest of the goods to be restored.

July 7. 1748.

DE DAAGARAAD. MARTIN SPERWIEN, Master.

DE  
DAAGARAAD.  
1748.  
Oct. 18.

De Daagaraad, Martin Sperwien, Master; taken by the Endeavour Privateer, Robert Cronsennall, Commander.

I am for the claimers.

Taken 15th March, 1747-8, O. S., about 4 leagues from Rye, and carried thither.

She is a Prussian ship, the sole property of Sieuwerdt Luiewes, a Dutchman by birth, but resides with his family at Koningsburgh.

Contraband.—  
Dutch property  
in foreign ship.  
—Small quan-  
tity.—Ship and  
goods restored.  
—Just cause of  
seizure, and ex-  
penses allowed.

<sup>1</sup> *Vide antè.*

<sup>2</sup> 3 March, 1747. *Juffrow Magdalena*; beer restored as an article of

luxury, cited in *Jonge Margaretha*,  
1 Rob. 190.

DE  
DAAGARAAD.  
1748.  
Oct. 18.

A bill of sale of the ship on board, dated 29th April, 1743.

The master, four mariners, and two passengers on board ; all Prussians except the passengers, who are Hollanders.

Burthen 110 tons, rebuilt at Koningsburgh.

She sailed from Koningsburgh to Rotterdam, laden with flax, seed, and potashes.

*At the time she was taken was bound from Rotterdam to Bayonne.*

The voyage began at Koningsburgh, and was to have ended there.

All the goods on board at the time she was taken were laden at Rotterdam.

Consist of 1400 cheeses, 22 chests of earthenware, 10 chests of pipes, ten bales of pepper, 15 barrels of red herrings, two bales of stockings, and one box of clothes, and no other goods.

Cornelius Dubbledemuss, a merchant at Rotterdam, was the sole lader of all the said goods.

But the master swears he knows not what countryman he is, nor can he set forth who is the owner of the said goods. They were to be delivered at Bayonne, but for whose account or to whom he cannot depose.

Three bills of lading signed, all of the same tenor ; none colourable ; one bill only on board.

No charter-party.

*Ship's Papers.*

No. 1. Bill of lading for the whole cargo, laden at Rotterdam by Dubbledemuss for his own account and risk, to be delivered at Bayonne to the bearer of the bill or to his factor or deputy. Dated at Rotterdam, 23rd March, 1748.

No. 2. Certificate that Luiewes had sworn the ship is his sole property; dated 29th April, 1743.

No. 3. Builder's certificate that the ship is Prussian built, dated 22nd April, 1743.

No. 12. Certificate of the Admiralty.

No. 8. Affidavit of Dubbledemuss, the lader, that the whole cargo is laded for his own account and for that of his consorts, likewise burghers and merchants of Rotterdam, and recites the particulars of the cargo agreeable to the bill of lading, dated at Rotterdam, 23rd March, 1748.

No. 11. Clearances at Rotterdam of the cargo.

No. 12. Luiewes' declaration on oath that the ship is his sole property, dated 20th April, 1747.

DE  
DAAGARAAD.  
1748.  
Oct. 18.

4th April, 1748, the master claimed on oath the ship as being the sole property of Siewerdt Luiewes, an inhabitant of Koningsburgh and a subject of Prussia, and claimed all the cargo as being the sole property of Cornelius Dubbledemuss, a merchant of Rotterdam, and a subject of the States-General, and claimed costs, damages, and expenses.

7th June, 1748, N. S., at Rotterdam. Cornelius Dubbledemuss made affidavit that in March he shipped for his own account all the goods on board, and that he was and is the sole owner of them, and that no enemy of the Crown of Great Britain had at the time of the capture of the ship, or now hath, any interest in the said goods or any part thereof, directly or indirectly: this is exhibited.

N. B. The captor by his act insists, first, that the cheeses and red herrings are contraband, and ought to be condemned.

But if they are not condemned, that,



DAAUARAAD.

1748.

Oct. 18.

Secondly, there was just cause of seizure.

*Dr. Hay*, for captors.

Pepper, herrings, and cheeses are provisions<sup>1</sup>, and contraband.

N. B. Cheeses in the case of the *Eendragt*<sup>2</sup>, held not to be contraband.

PER CURIAM:

The pass of the Admiralty of Koningsburgh is a sufficient pass.

Dutchmen<sup>3</sup> may carry provisions in their own ships, but this cargo is of small value, and I restore the ship and goods, and pronounce just cause of seizure and expenses.

Oct. 18th, 1748.

THE  
ST. JOHANNES.

1748.

THE ST. JOHANNES.<sup>4</sup> DIRK NIELSON, Master.

The St. Johannes, Dirk Nielson, Master; taken by four armed Cutters, under the command of Commodore Townsend.

Pot-ashes.—  
Same owner.—  
Cargo condemned.—Ship  
restored.

I am for the captors.

Danish ship, the property of persons inhabiting at North Bergen.

Taken 1st of May, 1748, o. s., off Ostend; first carried to Flushing, then brought to Dover.

<sup>1</sup> As to provisions, *vide antè* p. 93.

<sup>2</sup> *Eendragt*, cited 1 Rob. 190.

<sup>3</sup> *Vide* Dutch Treaty, *antè*, p. 126

<sup>4</sup> Cited in the *Jonge Margaretha*,  
1 Rob. 193.

Bound from Bergen to Dunkirk under Danish colours.  
Twelve mariners, including the master, two boys and one passenger on board, all Danes.

THE  
ST. JOHANNES.  
1748.  
Oct. 20.

None of them any interest in the ship or goods, except the master, who had  $10\frac{1}{2}$  barrels of fish rows, and 10 or 11 barrels of cod-fish, and a box of candles, which belonged to the passenger.

Ship built at Lubeck, 35 lasts.

Her voyage was from Bergen to Dunkirk, from thence in ballast to St. Martins, and then back to Bergen and to no other places.

Lading—rice, potashes, white soap, green soap, French brandy, salt, herrings, cod-fish, salt-fish, dry fish, and fir-deals, and no other goods, with which she was proceeding on freight agreeable to charter-party.

No bill of sale on board, but there is a Biel brief.

Jan Vonde Volde, Berendt Frochen, and Thomas Vanderlippe, and no other persons, were the laders, who all live at Bergen; and the master swears, they told him they were the owners, and he believes they are, and the goods were to be delivered on their account at Dunkirk.

Three bills of lading, and no more, were signed; not colourable.

One on board.

There is a charter-party, No. 9.

N. B. The mate to eighth Interrogatory says, the deals were about 9 foot long, about a foot broad, and from an inch to an inch and half thick, and there were about 29 dozen of them.

Pierre Bernard Guillebert, a French passenger on board.

THE  
ST. JOHANNES.  
1748.  
Oct. 20.

5th Interrogatory, that the rice, part of the lading, was condemned by the Admiralty of France, as prize taken in an English ship by the French, and carried into Bergen about 24th August last N. S., and sold by auction at Bergen 30th March last N. S.

Says the correspondent Vanderlippe told him, that he and Jan Vonde Volde and Berendt Frochen were the laders, but deponent does not know who were the owners of the cargo.

Deponent was entered on the roll of equipage, though really a passenger, to avoid his being made a prisoner by the English.

*Ship's Papers.*

No. 1. Bill of lading for the whole cargo.

No. 2. Attestation of the property of ship and cargo, sworn at Bergen, 23rd April, 1748.

No. 4. A Danish pass, dated 4th April, 1748.

No. 6. Clearance at Bergen of the goods named in the bill of lading.

No. 9. Charter-party, dated 20th April, 1748, between Thomas Vanderlippe, freighter, and Captain Nielson, for a voyage to Dunkirk, then to St. Martins and back to Bergen.

28th May, 1748, Dirk Nielson, the master, gave in a claim on oath for the ship as being the property of Hendrick Nielson and several others, all of North Bergen and Danish subjects, and for 10 barrels of salt-fish, and 11 barrels of cod-rows salted, as being his own property, and for all the rest of the cargo as being the property of Thomas Vanderlippe, Jan Vonde Volde, and Berendt

Frochen, all merchants of Bergen and Danish subjects, and for damages, expenses, &c.

THE  
ST. JOHANNES.  
1748.  
Oct. 20.

N. B. The papers and depositions appear to be all fair and regular, and the question is only whether the rice and fish are not contraband.

Sailed from Bergen 27th April, 1748, N. S.

Dr. *Pinfold*, for the claimers.

Danish ship, proceeding by charter-party with various goods from Bergen to Dunkirk.

No case where rice has been held to be ship's provisions. In the *Daagaraad*<sup>1</sup>, herrings were said to be for luxury, and were not condemned.

Brandy going to Dunkirk, has been condemned when the French army lay near Dunkirk.

5th art. of instructions.

Taken the last day of captures, in the Channel, *after a cession of arms at land*.

Allies carrying on a proper trade.

Dr. *Hay*, same side.

Produce of Denmark.

Provisions going to a besieged town, or for the *public* service, are always contraband. Herrings were restored in the case of the *Daagaraad*.<sup>1</sup>

Cargo of a mixed nature.

The different situation of affairs makes it proper to vary the judgment of the Court per law.

<sup>1</sup> *Vide antè*, p. 163.

THE  
ST. JOHANNES.

1748.  
Oct. 20.

PER CURIAM:

A Danish ship and cargo.

Question, whether the cargo, which all belongs to the same owners, ought not to be wholly condemned, part of them being contraband.

Some part of the cargo is provisions.

Rice is corn, and certainly is provisions.

Herrings in a large quantity must be for food, and the quantity will make them contraband or not.

*De minimis non curat lex.*

I there in the case of the *Daagaraad*<sup>1</sup> considered those 5 barrels of herrings rather as ship's provisions than as merchandizes.

Soap and potashes are not contraband, but as they belong to the same owners as the contraband, they by law are liable to confiscation by being infected by the contraband.

Restored the ship and condemned the whole cargo.

Oct. 20th, 1748.

DE KLEIN  
DAVID.

1748.  
Oct. 22.

Contraband.—  
Prussian ship.  
—Wine.—  
Brandy.—  
Papers lost.—  
Supplied.—No-  
tification.—  
Ship and cargo  
restored.—Just  
cause of seizure.  
—Captors' ex-  
penses allowed.

DE KLEIN DAVID. MICHAEL BUGDAHL, Master.

De Klein David, Michael Bugdahl, Master; taken by the Warren, Roger Brown, Commander, and the Hawke, Charles Wilson, Commander.

I am for the captors.

Prussian ship.

Messrs. Splitgerber and Daum, merchants at Berlin,

<sup>1</sup> *Vide antè*, p. 163.

owners of  $\frac{2}{3}$ ths, Johan Jacob Vansloss of Stettin, owner of  $\frac{2}{3}$ ths, and the Widow Schodem of Stettin, owner of  $\frac{1}{3}$ th, all Prussians.

DE KLEIN  
DAVID.  
1748.  
Oct. 22.

She was built at Colbert in Pomerania.

Navigated with 10 men and the master, all Prussians, except one Dane and one Dantzicker.

28th Dec. 1747, this ship sailed from the river of Stettin with a lading of oak and deal plank and other wood, bound for Port L'Orient on freight.

Delivered said lading there for the account of the French East India Company.

The freight amounted to 6000 livres, which the master remitted to his owners; proceeded in ballast from L'Orient to Vannes in France.

Took in a lading of rye on freight for Bourdeaux, delivered the same there to a considerable company of merchants.

At Bourdeaux, Mr. Streckeiser, a merchant there, shipped on board a lading of wine and brandy to the quantity of 223 tons for *Dunkirk*.

And the master agreed with the said Streckeiser at Bourdeaux for freight of the said wine and brandy after the rate of 50 livres per ton.

Sailed with the said lading from the river of Bourdeaux for *Dunkirk* on the 5th May, 1748, n. s.

On the 8th of May in the evening an English ship (the *Hawk*) laid her on board and took away her papers.

The next morning the Warren of Liverpool came up, and sent his boat and asked the master for his papers.

He answered, they were on board the other English ship, then lying near.

The Warren's boat went to the other ship, and the master says, he has heard and believes, the Warren's people in the

DR KLEIN  
DAVID.

1748.  
Oct. 22.

boat got from thence his said papers, and in going back to the Warren, the said boat overset, and all the hands in the boat, except one, were drowned, and he believes his papers were then lost.

But deponent had several other letters and papers on board, which he has delivered to the captors.

She was brought into Liverpool 11th May, O. S.

Had only one bill of lading for the cargo, which was to be delivered at Dunkirk to merchants, whose names he does not remember.

2 hogsheads of wine and 12 ankers of brandy belong to deponent, and *the rest of the lading he believes, but to his knowledge cannot positively say, was the property of Messrs. Splitgerber and Daum; well remembers the bill of lading called it their property.*

Christian Frederick, the mate, says, he does not in the least know whether the cargo belongs to French or Prussian subjects. }

Michael Tall, carpenter, says, the ship's crew, being unwilling to go to Dunkirk, as fearing to be taken, the captain promised to pay them by the month, if any such accident happened.

Does not in the least know to what prince's subjects the cargo belongs.

Taken about 15 or 20 leagues off Belle Isle, 14th June, 1748.

The master claimed the ship as the property of Messrs. Splitgerber and Daum and other subjects of Prussia, and claimed the whole cargo as the sole property of the said Splitgerber and Daum, and costs, damages, and expenses.

N. B. It appears from the letters, that this ship was to get freight as it could, but some of the last letters intimate

that this present cargo was for account of Splitgerber and Daum.

DE KLEIN  
DAVID.

1748.  
Oct. 22.

*Dr. Simpson*, for claimers.

The letters show the cargo is Prussian ; the prior voyage not material. Brought in to be condemned, because we wanted papers, which by their means were lost.

N.B. No affidavit from the Hawk that the papers were lost.

*Dr. Hay*, same side.

The Court said, he had information from the Secretary of State<sup>1</sup>, that the claimers had papers come from Prussia to instruct their cause, and therefore ordered *ex officio* that the claimers should bring them in, though both captors and claimers prayed the cause to be heard upon the above evidence, and accordingly adjourned the cause to 22nd Oct. 1748.

These papers are exhibited and contain two royal Prussian passes, dated 2nd March, 1748.

Declaration on oath of the property of the ship.

Declaration on oath of Splitgerber of the property of the cargo, that it is wholly his.

Bill of sale of ship.

Declaration on oath, that the outward cargo was Prussian property.

And a pass demanding the privileges of the Dutch treaty, 1st Dec. 1674, Treaty of Utrecht, and Lord Carteret's declaration in 1744,

Fully prove the ship and cargo to be Prussian.

Captors' council objected to reading these papers, because

<sup>1</sup> *Vide Elsebe*, 5 Rob. 178. ; *Neptunus*, 6 Rob. 403. ; *Sansom*, 6 Rob. 417.



DR KLEIN  
DAVID.

1748.

Oct. 22.

there was no proof that these exhibits are copies of documents, that were on board of the ship at the time of the capture, and were lost when the privateer's boat was upset.

PER CURIAM:

As the papers were lost by accident, that misfortune may be retrieved in the best manner which can be, which is by reading copies of papers from public offices, and therefore these papers may be read.

Pass granted by the president and councillors appointed for the Regency of Pomerania has these words: —

We desire all Admirals, &c., to let the said master enjoy all the franchises, immunities, and privileges which the subjects of His Majesty the King of Prussia have a right to demand by virtue of the treaty of the 1st day of Dec. 1674, and that of Utrecht, art. 11. in the year 1713; the first of them made between the King of Great Britain and their High Mightinesses the States-General, confirmed by His Majesty King George in the year 1744; and the second between the Crowns of France and England; as also by virtue of the assurances, which my Lord Carteret gave in the year 1744, from the King his Master to Mr. Andrie, minister of our Court to that of Great Britain, that all sorts of timber proper for the building of ships were free and permitted, and that the flag and ships of Prussian subjects should be strictly respected by England, which we do likewise promise to grant in the like cases to the subjects of foreign powers, provided with the necessary passes, or in case we are duly required thereunto. Dated, Stettin, 21st Nov. 1747.

*Dr. Jenner, for the captors of the Klein David.*

*Margareta Elizabeth*<sup>1</sup>, Rasmus Torentzen, master, 7th July, 1748.

DE KLEIN  
DAVID.

Danish ship, bound to Rochelle with a large quantity of beer: the Court held that 100 barrels of beer being a large quantity, was contraband and condemned as such.

1748.  
March 22.

*Maria Elizabeth*, Hans Luers, master, 23rd June, 1748; Hamburg ship, bound from Rochelle to Dunkirk, with salt and brandy: whole cargo condemned as contraband.

By treaty with Holland, 1667<sup>2</sup>, wine is declared not to be contraband, *ergo* otherwise it would be.

Treaty 1674<sup>3</sup>, the same.

Treaty with Sweden<sup>4</sup>, 1660, expressly declares provisions to be contraband, and wine is provisions.

Treaty of Utrecht<sup>5</sup> with France declares wines by name not to be contraband.<sup>6</sup>

Treaty of Utrecht with Spain, the same. These treaties show that all nations deemed wines to be contraband in their own nature.

*Dr. Simpson*, for the claimers.

A case of consequence because of a national concern.

Ally not to be obstructed in a fair trade.

Do not know any treaty between England and Prussia; so this case stands on the law of nations.

By the treaties cited it appears that by general consent of all nations wine is not contraband, for they have by those treaties expressly declared wines shall be free.

King's proclamations or instructions don't mention wines.

<sup>1</sup> *Vide antè*, p. 160.

<sup>2</sup> Dumont, vol. vii. p. 44.; D'Hauterive, vol. vii. p. 5.

<sup>3</sup> *Vide antè*, p. 128.

<sup>4</sup> 21 Oct. 1661. Dumont, vol. vi. p. 385. § 11.

<sup>5</sup> *Id.* vol. viii. p. 345. § 20.

<sup>6</sup> Dumont, vol. viii. p. 409.; and *id.* vol. viii. p. 31.

DE KLEIN  
DAVID.

1748.

Oct. 22.

*Opuscula varia Heineccii*<sup>1</sup> *de navibus.*

Contraband are goods prohibited, *publicâ lege aut denunciatione.*

*Salt I admit is contraband.*<sup>2</sup>

N. B. Yet the treaties have said, it shall not be contraband.

The passes which were on board expressly declare that the lading of wine and brandy is Prussian property and belongs to the present owners.

*Dr. Hay, same side.*

Two questions: whether the cargo is contraband.

Second, whether, supposing it is not contraband, there was just cause of seizure.

A new point to insist wines and brandy are contraband.

Bynkershoek: *excute pacta.*<sup>3</sup>

Wine and brandy luxurious liquors.

*Would the Court have ordered us to exhibit fresh papers if you had thought the cargo contraband.*

Full proof on board that the ship and cargo were Prussian.

*Without such passes the owners would not have gone on such a voyage.*

PER CURIAM:

Agreed this is certainly a Prussian ship.

Went with timber to L'Orient, then in ballast to Vannes and carried rye to Bourdeaux, there took in wine and brandy for Dunkirk.

The papers being lost by accident, it was necessary to

<sup>1</sup> *Vide* Heineccii, *Opusc. varia.*  
*De nav. ob vect.* § 15. p. 332.

<sup>2</sup> *Vide antè,* p. 141.

<sup>3</sup> *Bynk. Q. J. P. lib. i. c. 10. p. 79.*

exhibit fresh papers, to supply the place of those that were lost.

The whole cargo is wine and brandy, and the question is, whether it ought to be condemned or not.

Contraband has admitted various interpretations agreeable to the state of the cases.

Princes declare sometimes things to be contraband which are not so in their nature, and in those cases notifications thereof are given to other sovereigns.

If this ship had been going to Prussia, undoubtedly it would have been a fair trade.

This ship has been trading from port to port to assist our enemies, which is not acting agreeable to good faith.

Two passes sent to Bourdeaux, not on board when she first sailed. These two passes are not on oath, which arises from there being no treaty of commerce between England and Prussia.

The law of nations is uncertain, and the determinations upon it very various.

Treaties have determined, what shall and what shall not be contraband.

If the new papers had not been exhibited, the property of the cargo would have been doubtful.

I think the privateer had reason to suspect this was an unfair trade; and therefore, upon the whole circumstances of the case, I restore the ship and cargo, but pronounce just cause of seizure, and decree expenses to the privateers.

Oct. 22nd, 1748.

This judgment was appealed against on the part of the claimants, more especially against such part of the decree as pronounced there was just cause of seizure and condemned the appellant in expenses.

**DE KLEIN  
DAVID.**

**1761.  
June 27.**

The captors did not appeal; but, by way of adhesion to the claimants' appeal, insisted that the Judge below ought to have condemned the ship and cargo as good and lawful prize.

*Dr. Simpson*, for appellant.

Papers lost.

Only one bill of lading for the cargo.

Letters on board show the property of the ship and cargo.

The same proof of Prussian property in the cargo as in the ship.

1748. 4th June. Monition.

14th June. Claim by Bugddahl.

We offered additional papers to supply loss of those on board. They are —

1. Certificate of property of ship.
2. Pomeranian general pass.
3. Two special passes for this ship and cargo.

28th July. Cause part heard. Court pronounced just cause of seizure, &c., because new papers were exhibited.

Seizure in violation of instructions.

*Mr. Solicitor-General*, for claimants.

Captor must prove his case, whether there be a claim or not.

Has done nothing unlawful in her whole voyage.

No costs due.

Privateer has not done wrong.

*Ergo*, reward him by making the right-doer pay costs.

DE KLEIN  
DAVID.

1761.

June 27.

14th December, 1649. The *Providentia*<sup>1</sup>, a Russian ship, brought in, laden with masts, &c. Judge decreed to sell cargo in England, and pronounced just cause of seizure, and costs. Lords reversed the sentence as to costs.

There can be no case where costs are to be paid by the claimer, unless he has been guilty of great misbehaviour. Damages have been given in many cases in the Courts below.

The *Jacob*. Before the Lords, for immoderate damages. Adhesion has caused expenses.

*Dr. Simpson*, same side.

Same evidence for the property of *the cargo as of the ship*.

Privateer has given no account of the ship's papers.

Ship has lain at Liverpool, and perished.

1751, June 27.

The Lords reversed the decree as to costs<sup>2</sup> given to the captors, and pronouncing just cause of seizure, but affirmed it as to restitution of ship and cargo, and ordered each party to stand to their own costs.

Present: Earl of Granville, Lord President; Duke of Dorset, Marquis of Tweeddale, Earls of Cholmondeley, Holderness, and Hindford, Mr. Legge, Sir Thomas Robinson, Barons Clive and Smith.

<sup>1</sup> *Vide antè*, p. 94.

<sup>2</sup> On the subject of costs, *vide* the case of the *Ostsee*, 2 Eccl. & Adm.

Reports, p. 170.; and the *Leucade* *id.* p. 228.

DE  
WILHELMINA  
CATHARINA.

DE WILHELMINA CATHARINA. TYEERD

THEMUS JANSEN, Master.

1748.

Oct. 26.

Contraband.—  
Dutch Treaty.  
—Commission  
to unlade and  
inspect shot.—  
Saltpetre  
condemned.—  
Rest of cargo  
and ship re-  
stored.

De Wilhelmina Catharina, Tyeerd Themus Jansen;  
Master; taken by the Duke William Privateer, John  
Norris, Commander, and brought to Dover.

I am for the captor.

Dutch ship, bound from Amsterdam to Bayonne.

Taken 28th July, 1747, n.s., in Dover Road, half a  
mile from the shore.

8 Mariners including the master, and 1 boy, all neuters.

Burthen 65 lasts, Holland built.

The Widow of Meyndart Troye is the sole owner of  
the ship, and she lives at Amsterdam, and is a subject to  
the state.

A bill of sale, No. 61., of the ship, was made to her  
said husband.

She was laden at Amsterdam with 40 bundles of hemp,  
about 36 iron backs, 1000 cheeses, a barrel of small lead  
shot, a basket of wooden mallets used for corking of ships,  
some corn sacks, bales of cocoa, bales of cinnamon, and  
other bales, chests, barrels, and packs, whereof the master  
says he knows not the contents; knows not who were the  
ladens or owners but by his bills of lading.

The said goods were to be delivered at Bayonne, but for  
whose account or to whom they belonged, or for whom  
designed, he knows not.

Sailed from Amsterdam on the 5th July, 1747, arrived in  
the Texel on the 6th, continued there till the 24th July,  
and on that day sailed for Bayonne, where the voyage was  
to have ended.

180 bills of lading not colourable, none of a different tenor. 60 on board, no charter-party.

Was proceeding as a general ship for freight.

Had a Turk's pass on board, which the master refused to deliver up, and also the usual pass, dated 13th June, 1747, and all proper papers.

DE  
WILHELMINA  
CATHARINA.

1748.  
Oct. 26.

Grot Eckhoff was examined at Dover, but refused to sign his examination unless he was paid his wages, but afterwards he was examined, and signed in the registry.

There are material differences between his first and second depositions.

On the first he says she had none but the lawful goods on board, but does not know the particulars, because she was laden before he came on board.

On the 2nd to the 8th Interrogatory he *says he knows there was small shot on board, and the mate has lately told him there were cannon balls and large iron spikes on board.*

And to 11th Interrogatory: that he believes the goods were for French account, by reason that some of the crew had extraordinary pay on their refusing to sail, because the said lading was for French account.

The first examination was on the 22nd July, 1747; the last, on the 13th October, 1747.

On the 1st to 11th Interrogatory says he knows not who were the laders, or on whose account the goods were.

23rd October, 1747. Upon what Eckhoff had deposed concerning the small shot, cannon balls, and iron spikes on board, the captors prayed a commission to unlade and inspect the cargo, which the Court decreed, on the captors giving security in 2000*l.* to answer such damages as the owner may sustain by such inspection.



DE  
WILHELMINA  
CATHARINA.  
1748.  
Oct. 26.

24th Nov. 1747. Jansen, the Master, made an affirmation that at the time the lading was put on board, or at any time since, there was not nor hath been to his knowledge or belief, on any account whatsoever, put on board the said vessel, any cannon balls, bullets, powder or spikes, or other warlike stores; and that he never told Gert Eckhoff, or any other person, that there were put on board the vessel shot, balls, bullets, powder, or iron spikes, as deponent has been informed *Eckhoff has declared.*

14th December, 1747: A commission of inspection went under seal directed to James Goldfrop, Benjamin Brown, Peter Fector, and John Walton, merchants, who, on the 5th May, 1748, made a return thereto, by which it appears there are several casks of shot, but no cannon balls, iron spikes, &c. And in a large covered cask, marked No. 20. P. Y. T., they have returned that they found, among laces and other things, *five small bags of musket and pistol shot.*

But concerning these five bags of shot, they have returned that there is a dispute between Benjamin Brown, one of the commissioners, and Isaac Claypoole, who acted for Peter Fector, another commissioner.

The claimers insist that those five bags were clandestinely put into that cask by the captors, and the captors insist they were originally packed up therein; upon which point many

Affidavits on both sides have been exhibited, viz: —

For the claimers.

2nd July, 1748. Affidavit of Peter Fector, Isaac Claypoole, Thomas Page, Henry Jelly, Esq., and James Boyton.

They say the cask had been opened before by Brown and others, that the goods were much tumbled and ill packed at that end of the cask, and that the shot weighed about 14 pounds each bag, that the bags were clean, and they verily believe they had been put in after the cask was packed; but they say the bags and all the rest of the things were again put into the cask and it was headed up.

DE  
WILHELMINA  
CATHARINA.  
1748.  
Oct. 26.

*N.B. There could not have been room to put the bags in if they had not been originally stowed there.*

Another affidavit, 2nd July, 1748, of John Walton, Peter Fector, and Isaac Claypoole.

Walton says he was present on the 12th March, after the cask was first opened, but not imagining any contraband goods could be in a cask with laces, &c., he and Michell and Dykes walked to the other side of the warehouse, about 40 feet distance from where Brown and others were inspecting. Deponent refused to sign the return without an exception to that cask, because he believes the shot was clandestinely conveyed into the cask by the privateer's people.

5th April, 1748: Stephen Loquet, the owner of said cask, and three others, the packers, &c. thereof, made affidavit in Holland, that no shot or balls were put into that cask.

For the captors.

21st May, 1748: Affidavit of Benjamin Brown and Thomas Michell.

Brown swears positively that the shot was found in the cask, and positively denies that the same were at any time put into the cask with his privity, and if they had been put in, believes he must have known it, because he

DE  
WILHELMINA  
CATHARINA.  
1748.  
Oct. 26.

was present, and closely inspected the said cask from the time it was first opened to the time it was headed up again; and Michell gives the same account of what passed at the several times of opening the said cask.

30th March, 1748: Declaration at Dover, of Peter Fector, Isaac Claypoole, and Thomas Page, merchants; Henry Jelly, Esq., and James Boyton, landing-waiter.

This declaration is exactly the same as their affidavit of the 2nd July, 1748.

N.B. The master claimed the ship as property of Myn-dart Troye, widow, a subject of the States, and the cargo as laden in a Dutch ship.

N.B. There are a matter of 13 casks of shots on board, which were laden as goods.

*Dr. Paul*, for the claimers.

The Dover privateers, very diligent in seizing ships contrary to treaty: *very difficult to account for their not knowing the weight of this cask till the 12th March, and should then find the weight of it.*

Bags contained bullets of different sizes.

Evident that they were not on board by the laders.

The case will rest on circumstances which will show these bags were put in by the captors to save costs and damages.

Not a colourable bill of lading on board.

*Dr. Simpson*, same side.

Question whether these bags contain contraband, and whether they were originally put in by the laders.

None of the privateer's men who were present at searching this cask have made an affidavit concerning the finding the bullets.

*Dr. Pinfold*, for the captors.

Claypoole, when the bullets were first found, expressed no suspicion they were put in by the captors.

DE  
WILHELMINA  
CATHARINA.

1748.  
Oct. 26.

*Dr. Paul*, for the claimers.

This case must depend on the treaty of 1674<sup>1</sup>, art. 5.

*No instance of the Court's requiring a cocke ito be produced unless it is going into an enemy's port.*

Inspection granted upon the evidence that there were cannon balls, &c. on board.

Lead is not contraband, nor any other things but what are mentioned in the 3rd article.<sup>2</sup>

Captains of ships dont know contents of lading.

Shot is merchandise.

Concealment will not make it contraband.

*Glass bottles* are as much contraband as *shot*.

*Found weight of the cask after they had opened it, and not before.*

N.B. *I believe Mr. Brown did not see any bullets put in.*

The *Jacob*. 11 barrels of gunpowder held not to be contraband by the Lords.

*Dr. Simpson*, same side.

In what case is the cocket to be produced?

N.B. *Going to an enemy's port.*

*If she was on a lawful trade her pass ought to have freed her.*

No imputation for not specifying what is not contraband.

Shot is not enumerated as contraband in the third article, and not being so, is lawful by the 4th article.

*Shot for killing bears or wolves.*

The large shot is not musket shot.

<sup>1</sup> Dumont, vol. vii. p. 282.

<sup>2</sup> *Id.*

DE  
WILHELMINA  
CATHARINA.  
1748.  
Oct. 26.

## PER CURIAM:

Gert Eckhoff swears he knew there was shot on board, and the mate told him there were cannon balls and iron spikes: upon this evidence, the Court did, with difficulty, grant an inspection, but not before an additional security of 2000*l.* was given by the captors.

There is reason to doubt whether the 5 bags of shot were originally on board; the Dutch laders swear positively that they did not put them in, and that the package was finished in their presence, and directly sent on board.

On the contrary, it appears that the bags are German canvass, and it is not proved that the captors put them in. The Commission badly executed. Fector employed Claypoole to attend for him, which he had no right to do, nor should the privateer's people have been present.

Not in evidence that canvass is manufactured at Dover.

A large quantity of shot on board might be used by privateers to annoy us in war.

It has been urged by Dr. Lee that musket shot, enumerated in the 3rd article of the treaty, 1674 <sup>1</sup>, is the *genus* under which all species of shot is comprised, and there seems to be some weight in it; clearances should specify the goods contained therein.

Anything may pass under the general word merchandise.

The master owns one barrel of small shot, but owns no more; if he knew of one, how came he not to know of the rest, which were in the same bills of lading.

Dr. Lee has rightly laid weight on the concealing this shot; it carries presumption that the master and laders thought they were doing unlawfully.

Lead in gross is not by the 4th article <sup>2</sup> contraband, but

<sup>1</sup> *Vide antè*, p. 128.

<sup>2</sup> *Vide antè*, p. 128.

manufactured into shot is different: *quæ singula non prorsunt conjuncta juvant.*

A single barrel of shot would not be contraband, but 4 tons and upwards is; and therefore I think the privateer may be justified in bringing this ship to adjudication. I therefore pronounce just cause of seizure, and give the privateer costs, and condemn all the shot, the 5 bags of musket bullets, and the 14 pounds of saltpetre, and restore the ship and the rest of the cargo.

October 26th, 1748.

DE  
WILHELMINA  
CATHARINA.  
1748.  
Oct. 26.

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DE JONGE TOBIAS. JOHAN SETTERBOOM, Master.

De Jonge Tobias, Johan Setterboom, Master; taken by the Guernsey, Daniel Perchard, Commander, and brought to Falmouth.

DE JONGE  
TOBIAS.  
1747.  
Dec. 14.

I am for the captors.

Taken without resistance on the 24th August, 1747, in lat. 48.

Is a Swedish ship, the property of Johan Bonman, Casper Frederick Bahde, Johan Jacob Danker, and Frederick Lorenz Strombeck, all subjects of Sweden.

Seven mariners, all Swedes.

Burthen, 103 tons.

4th July, 1747. A charter-party was made at Amsterdam between Theodore Isaac Schutte, merchant there, as freighter on the one part, and Johan Setterboom, the master, as lessor on the other part.

To go with a lading from Amsterdam to Rochelle, there to deliver the goods to the freighter's correspondent, and

Contraband.—  
*Commeatus.*—  
Salt.—Dutch  
Treaty, 1674.—  
Swedish Treas-  
ties, 1661, 1720.  
—Cargo con-  
demned.—Ship  
restored.

DE JONGE  
TOBIAS.  
1747.  
Dec. 14.

then proceed to Zendrees, and there to apply to the correspondent of the freighter who shall lade the ship with salt, and proceed with such lading to Dunkirk, and deliver it to the freighter's correspondent.

Accordingly, the ship sailed from Amsterdam with a lading of coals to Rochelle. From thence proceeded in ballast to Zendrees. Proceeded from thence with a lading of 110 moys of salt for Dunkirk.

Taken on her passage to Dunkirk with the said lading on board.

The laders were the widow Schellebeck and Son, of Rochelle.

Four bills of lading signed. Not colourable.

The ship first sailed from Gefle in Sweden to Amsterdam with a lading of iron.

*Ship's Papers.*

No. 3., dated 16th August, 1747, a declaration of Schellebeck and Son, Dutch merchants at Rochelle, that the salt is laded by the order, for the account and risk, and is the property of, Theodore Isaac Schutte, merchant, Amsterdam.

No. 7. A clearance for the cargo bound to Rochelle.

No. 8. Receipt for the duties upon the salt.

No. 9. A French pass for foreign ships, for this ship with her lading of salt to go to Dunkirk.

No. 1. A bill of lading of the salt to be delivered at Dunkirk for the account and risk of Schutte.

No. 2. A certificate of the College of Commerce that the ship has been proved on oath to be Swedish property, dated at Stockholm, 2nd May, 1746.

N.B. The master of the privateer, in his affidavit of

ship's papers, speaks of his having seized the lading only as prize.

DE JONGH  
TOBIAS.

1747.

Dec. 14.

9th September, 1747. Setterboom, the master, gave in a claim on oath for the ship as being the sole property of the Swedes above named, and for freight, demurrage, costs, &c.

9th September, 1747. A claim was given in on oath by Abraham de Reiner, of London, for the cargo as being the sole property of Theodore Isaac Schutte, of Amsterdam, and for costs, &c. ; and annexed to his claim an affidavit of Schutte to his property, a bill of lading and invoice.

17th October, 1747. Mr. Schutte made another affidavit at Amsterdam that the salt is his sole property, which affidavit is very full.

*Dr. Paul*, for the claimers.

The salt not French property : full oath that it is Dutch property.

This is salt carrying from one French port to another, and therefore not contraband.

*Eendragt*<sup>1</sup>, a Prussian ship, 5th December, 1747. Held that cheese and beer are not contraband, much less can salt be so.

Don't know that salt is anywhere mentioned as provisions or as contraband.

Pepper, and spices, and sugar, are as much used in provisions almost as salt.

The treaty with Holland, of 1674, does not extend to this case.

Pray costs and damages.

<sup>1</sup> *Vide antè*, p. 166.



DE JONGE  
TOBIAS.

1748.  
Dec. 14.

*Dr. Simpson*, same side.

By the 2nd article, Treaty 1674<sup>1</sup>, freedom of commerce to the Dutch in all kinds of merchandizes, unless such as are declared contraband.

Treaty of 1661<sup>2</sup> with Sweden, is not a subsisting treaty.

In 1720<sup>3</sup>, the said treaty revived for eighteen years.

Provisions, Latin word *commeatus*, signifies public provisions; but *interdum privati hominis* Calvin Martinus.

*Dr. Jenner* and *I*, for the captors.

PER CURIAM:

Agreed this ship is Swedish, and the cargo Dutch property.

The whole lading is salt. Consists of 110 muids of salt.

The *Eendragt*<sup>4</sup>, a general ship on freight; the quantity being small, the Court did not consider a small quantity of cheese and beer as contraband.

Though the cargo is Dutch property, yet being on board a Swedish ship must be considered as Swedish property, and has not Dutch privilege.

The question is whether salt is provisions.

*Commeatus* a general word for all provisions public and private. This whole lading was going to Dunkirk, where it was useful both for the French army and for their privateers.

*Sta Boa Ventura*<sup>5</sup>, December 12. Tar, which in its nature is contraband, found in a Portuguese ship going from

<sup>1</sup> *Vide antè*, p. 128.

<sup>2</sup> *Vide Dumont*, vol. vi. p. 384.

<sup>3</sup> *Dumont*, vol. viii. p. 18.

<sup>4</sup> *Vide antè*, p. 166.

<sup>5</sup> *Vide antè*, p. 137.

Bayonne to Nantes, was held to be contraband and was condemned.

DE JONGH  
TORIAS.

In the treaty of 1674<sup>1</sup>, salt in a Dutch ship is declared not to be contraband, therefore if it had not been so declared<sup>2</sup>, it would have been contraband.

1748.  
Dec. 14.

Salt not mentioned in the Instructions, because it is not the produce of Sweden.

Treaty of 1661<sup>3</sup> is the subsisting Treaty with Sweden.

Upon the whole I am of opinion this lading of salt in a Swedish ship is contraband.

I condemn the cargo and decree the ship to be restored.

December 14th, 1749.

MED GUDS HIELPE.<sup>4</sup> JACOB SODERBERG, Master.

MED GUDS  
HIELPE.

Med Guds Hielpe, Jacob Soderberg, Master; taken by the Young Eagle Privateer, Captain Bazeley, Commander, and brought into the port of Dover.

1750.  
June 29.

Where he examined the master, mate, and boatswain on the preparatory standing interrogatories.

Contraband.—  
Pitch and tar.—  
Swedish Treaty  
Pass.—Notifi-  
cation.—Ship  
and cargo con-  
demned.—Af-  
firmed on  
appeal.

13th February, 1744. Jacob Soderberg, the master, swears that he is a Swede and lives at Stockholm. That his said ship and cargo were on February the 11th, 1744, o. s.,

<sup>1</sup> *Vide antè*, p. 128.

<sup>2</sup> *Vide Ringende Jacob*, 1 Rob. 92.;  
*Twende Brodre*, 4 Rob. 33. 36.

<sup>3</sup> *Vide antè*, p. 175.

<sup>4</sup> This case was cited as "The

famous case of the *Med Goods Hielpe*," *Staudt Embden*, 1 Rob. 29.; and "The memorable case of the *Med Goods Hjelpe*," *Maria*, 1 Rob. 373.

MED GUDS  
HJELPE.

1750.

June 29.

seized about two Dutch leagues from the shore off Dungeness by the Eagle privateer, John Bazeley, commander.

She was navigated with twelve mariners, all Swedes.

Burden, about 100 Dutch lasts.

Her cargo was pitch, tar, and firewood, for stowage.

Sailed from Stockholm, 5th October, 1744, bound to Port Louis in France, where the voyage was to end.

That the ship and cargo were entirely the property of Swedes residing at Stockholm.

The lading belongs to Jean Bedoire, of Stockholm, and was to be delivered to his son at Port Louis.

The other witnesses agree.

N.B. There is no passport according to the treaty.

Question. Whether pitch and tar are not contraband, and as such lawful prize.

Instructions 18th June, 1744, art. 5.

Claim by the master for ship and cargo, as entirely belonging to Swedes.

1702. *Christiana Margareta*, bound to Havre de Grace:

Ship and lading restored to subjects of Denmark paying expenses, except fourteen barrels of tar, which was condemned as prize.

“ Whitehall, May 18th, 1665.

“ By His Majesty’s Principal Commissioners of Prizes, canvass, masts, pitch, tar, and all other naval accommodations declared contraband goods, and so intended by His Majesty’s declaration of the 22nd February, 1664.”—*Treaty with Sweden in 1661.*<sup>1</sup>

<sup>1</sup> 21 Oct. 1661. Dumont, vol. vi. p. 384.; D’Hauterive, vol. vii. p. 266.

N.B. The cargo consists of 970 barrels of tar, and 330 barrels of pitch.

MED GUDS  
HJELPER.

1750.

June 29.

*Dr. Paul*, for the claimer.

We were carried into Dover, where there was not water enough to bring her in.<sup>1</sup>

Soderberg begged she might not be carried thither, because she drew fourteen feet water.

The privateer did her much damage thereby, insomuch that she is not fit to proceed upon her voyage.

If it is not contraband within the Treaty with Sweden, the instructions<sup>2</sup> cannot make pitch and tar to be so.

*Dr. Edmunds*, same side.

*Dr. Simpson*<sup>3</sup>, for the captors.

There not being a passport in the form prescribed by the treaty, the cargo must be presumed to be enemy's goods. Pitch and tar are *bello apta in se*.

*Bynkershoek*, p. 79.<sup>4</sup> All goods are contraband which are *per se bello apta*.

In 1664, order of council for adjudication of prizes, 5th article.<sup>5</sup>

Upon which the order of the Commissioners of Prizes, May 18th, 1665, was made.

1692. *The Arms of Plymouth*, a Swedish vessel, Hans Oldson, master.

Laden with pitch and tar at Gottenburgh.

Bound to France.

4th August, 1692. Lading condemned as good prize.

<sup>1</sup> As to convenient port, *vide* (then Dr. Lee) was counsel for the Story's Practice, p. 37. captors, with Dr. Simpson.

<sup>2</sup> *Vide ante*, p. 60.

<sup>3</sup> In this case Sir George Lee

<sup>4</sup> Bynk. Q. J. P. lib. i. c. 10.

<sup>5</sup> *Vide* Appendix.

MED GUDS  
HJELPE.

1750.

June 29.

The cause appealed.

26th October, 1692. Lords affirmed the sentence; remitted the cause.

17th November, 1692. The King in council ordered the proceeds to be restored to the owners, and all the ship's papers.

N.B. At this time the whole prize was not given to the captors.

*Dr. Paul*, for the claimers.

1711. *St. Anna* and the *Sladen*, of Stockholm, brought in for want of passports by the Marquis of Caermarthen.

The Judge allowed the owners to plead, and prove their property.

They proved their property.

The Judge restored them, but pronounced for just cause of seizure.

Appealed the *Anna*; the Lords confirmed the sentence.

But in the other case, the *Sladen*, of Stockholm, was condemned by the Lords for want of a passport, and the Judge's sentence reversed.

Pitch and tar are proper for many purposes; no express precedent of condemning these goods as contraband.

The words of the Latin Treaty with Sweden in 1661<sup>1</sup>, article 11.: — "*Cautum tantum-modo sit interim ne merces ullæ vocatæ contrabanda et specialiter nec pecunia*," &c.; and then says, "may carry any goods *de quibus supra exceptum non est*."

The Swedes never complained of being obliged to sell their pitch and tar in England.

<sup>1</sup> Dumont, vol. vi. p. 385.

*Dr. Edmunds*, same side.

The constitution of Sweden is altered since the treaty of 1661; and they have now a Chamber of Commerce which grants passports in their form, and they have never granted any in the form of the treaty.

In the *Humility* it was held not to justify a seizure, and costs and damages given against the captor.

Pitch and tar no where expressly mentioned as contraband.

Contraband are things which are of service in war in the shape they are in.

*Sir Leoline Jenkin's Life*, 2 vol. fol. 751., Letter 29th August, 1674, to the King.

*Bergdstadt*, of Stockholm, laden with pitch and tar, for account of an Englishman going to France, seized by a Spanish privateer who was in war with France and carried to Ostend, there brought to condemnation upon a declaration of the Spanish Governor that they were contraband.

*Sir Leoline* of opinion they were not to be contraband by the treaty<sup>1</sup> with Spain, but as they were not laden in an English ship the treaty could not relieve the claimer, but says it is very improbable the Swedes should allow pitch and tar, their native commodities, to be contraband, and declares his opinion that nothing ought to be judged contraband but what is immediately in its own nature subservient to war, unless there was a public notification to all the world that we would condemn them as contraband.

Pitch and tar is the produce<sup>2</sup> of Sweden; it cannot be imagined they would make them contraband.

This treaty explained by subsequent usage.

<sup>1</sup> 1667, May 23. § 24. Dumont, vol. vii. p. 31.

<sup>2</sup> As to growth and produce, *vide antè*, p. 49.

MED GUDS  
HJELPER.

1750.  
June 22.

**MED GUDS  
HJELPE**

1750.  
June 29.

In the instances cited on the other side, the privateers had an interest, and therefore if they were contraband they must have been condemned.

*Concordia*, 1706, bound to Rouen.

Laden with pitch and tar; brought in as prize.

Ordered the pitch and tar to be sold in England, and to certify in three months.

Appealed.

23rd April, 1706. The Lords reversed the decree, and ordered ship and goods to be restored absolutely.

*Town of Rotterdam* the same.

These are the last instances of ordering cargo to be sold in England.

*St. Peter of Stockholm*, 1696. Laden with 72 tons of tar; bound from Stockholm to Rochelle. Restored without any conditions.

Instructions, 1706, limit contraband as to Sweden to the particulars specified in the 11th article.<sup>1</sup>

Instructions<sup>2</sup> are very different from rules to this Court by the Crown or public notification to all crowns.

A man-of-war would be punishable if he seized a Swedish ship with pitch and tar, because not contraband by treaty.

#### PER CURIAM:

Agreed the ship and cargo are Swedish; navigated and manned by Swedes.

Laden with pitch and tar, and bound from Stockholm to Port Louis in France.

The question is, first, whether she is supplied with a proper pass.

The pass she has is very materially different from the

<sup>1</sup> *Vide antè*, p. 192.

<sup>2</sup> *Vide antè*, p. 128. and p. 108.

form directed by the treaty, for this does not certify the cargo.

The Swedish treaty has of late not been so strictly observed as perhaps it was before; possibly some new conventions have been made between England and Sweden, which the Court does not know of.

The 2nd question is, whether pitch and tar are contraband.

It is a question of great moment, and deserves to be well considered.

Many cases have been quoted, which ought to be looked into.

When the prizes<sup>1</sup> belonged to the Crown the Court might show favour to the claimers, which cannot be shown now the prize is given to the captor, and that distinction has been well enforced by Dr. Lee.

The words in the treaty of the 11th art.<sup>2</sup> *et specialiter*, may fairly be interpreted to be *for example*.

From the 5th art. of Instructions, which expressly says pitch and tar shall be accounted contraband, one would imagine some modern treaty with Sweden has expressly declared them to be contraband.

Took time to consider the case, and look into the precedents.

Aug. 9. 1745. Sir Henry Penrice gave sentence in this case.

<sup>1</sup> Prize is altogether a creature of the Crown. No man has or can have any interest but what he takes as the mere gift of the Crown. *Vide El-sebe*, 5 Rob. 181. Partial interest has been granted away at different times, *vide* Rob. Coll. Marit. p. 188.

But the statute 6 Anne, A.D. 1708, is the first which gave to the captors the whole or sole benefit. A similar Act is passed on the breaking out of every war. The present Prize Act is the 17 Vict. c. 18.

<sup>2</sup> Dumont, vol. vi. p. 385.



MED GUDE  
HIELPE.

1750.

June 29.

PER CURIAM.

The question is, whether this Swedish ship is well seized by the *Eagle* privateer.

This ship had not a passport<sup>1</sup> in the form directed by the treaty with Sweden in 1661, and therefore the privateer had good reason to bring in this ship.

Her whole cargo is pitch and tar, and there is no doubt but that it was designed for the use of the French.

Pitch and tar are not enumerated in the 11th article<sup>2</sup> of the Swedish Treaty, but I rather think those enumerated were mentioned rather for example than by way of exclusion, and that there are other contraband goods than what are mentioned in that article.

Three species of goods—

1st. For immediate use of war, in the manner they are and those are, contraband.

2nd. Of a mixed nature, which may be of use for war and for other purposes, and these sometimes are, and sometimes are not contraband.

3rd. Things for pleasure, and which are of no use in war, and those are not contraband.

Pitch and tar are of a mixed nature; may be used for civil purposes, and also for fitting ships of war.

Sovereign Princes at war may declare such and such things to be contraband, and after notice to their allies, their subjects may certainly seize them.

The *Arms of Plymouth*, in 1692, is the strongest case that has been cited for condemning this ship.

In the old instructions the 11th and 12th articles of the Swedish Treaty were inserted.

Now they are not inserted, and I suppose the reason

<sup>1</sup> Art. 12. *Vide* Dumont, vol. vi. p. 386.

<sup>2</sup> *Vide* Dumont, *ib.*

was, because by the present instructions pitch and tar in Swedish ships are expressly declared to be contraband.

A privateer who pursues his instructions, does right.

The Eagle privateer has pursued the King's instructions, and therefore I declare and pronounce that this ship and her cargo of pitch and tar are good and lawful prize, and was rightly and duly seized and taken by the Eagle privateer, Captain Bazeley, Commander.

9th August, 1745.

Nov. 12th, 1745.

The above judgment was appealed against, and came on for argument before the Lords of Appeal.

*Dr. Paul*, for appellants.

Treaties by Cromwell enumerate contraband, and nothing else is so.<sup>1</sup>

Pitch and tar have been ordered to be sold in England.

Attentat by selling.

N. B. *Treaties with Cromwell not confirmed.*

*Mr. Solicitor-General*, for respondents.

Contraband is every thing that is of use in carrying on the war.

*Dr. Paul's* argument.

Pitch and tar are not useful without tallow.

9th art. of Instructions directs treaties to be observed.

*Mr. Attorney-General*, same side for appellants.

First, consider the ship only.

No instance mentioned of condemning the ship for having contraband goods.

MRD GUDS

HIELPE.

1750.

June 29.

<sup>1</sup> *Vide* p. 191. n.

**MED GOODS**  
**HIJACK.**

1750.  
June 29.

2ndly. Consider the goods.

1st. With regard to the Law of Nations.

Every good purpose is supported by detaining the goods that may be made use of in war.

*Bynhershoek.* Does not say pitch and tar.

Treaty with Sweden, 1661.

Nothing contraband but what is enumerated in the 11th article.

*Christiana Margareta.*

*Sir Lionel Jenkins*, 2 vols. 751.

The Lords having heard the counsel, took time to deliberate before they gave sentence.

On the 29th of June, 1750, the Lords met and confirmed the sentence of the Judge of the Admiralty, pronouncing that the cargo is contraband by the laws of nations and within the treaty with Sweden, and condemned both ship and cargo.

Present at this sentence, Duke of Dorset, Lord President, Lord Chief Justice Willes, and Mr. Doddington. The Duke of Bedford and Earl of Harrington heard the cause, but were absent when the sentence was given, but sent their approbation and consent to it.

MED GUDS  
HIELPE.1750.  
June 29.

## NOTES FOR ARGUMENT

IN THE CASE OF THE MED GUDS HIELPE.

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*Bynkershoek, Quæst. Juris Publici*, lib. 1. cap. 10. p. 79.

“Intelligo *contrabanda* dici, quæ uti sunt, bello apta esse *possunt*, nec quicquam interesse, an et extra bellum usum præbeant. Paucissima sunt belli Instrumenta, quæ non et extra bellum præbeant usum sui. Enses gestamus ornamenti causâ, gladiis animadvertimus in facinorosos et ipso pulvere bellico utimur pro oblectamento et ad testandam publice lætitiâ, nec tamen dubitamus, quin ea veniant nomine *contrabandi*.

“Excute pacta gentium, excute et alia quæ alibi exstant reperies omnia illa appellari *contrabanda*, quæ uti hostibus suggeruntur, bellis gerendis *inserviunt*, sive instrumenta bellica sint, sive materia per se bello apta.”

Eod. cap. p. 77.

“Regula est, pactis fere perpetuis probata, ne non hostes ad hostes nostros vehant *contrabanda*, si vehant et deprehendantur *in commissum cadant*.”

*Grotius*, lib. 3. cap. 1. sect. 5. nu. 1.

“Quæstio incidere solet, quid liceat in eos qui hostes non sunt aut dici nolunt, sed hostibus res aliquas subministrant, nam et olim et nuper de eâ re acriter certatum scimus, cum alii *belli rigorem*, alii commerciorum libertatem defenderent.”

MEX GUDS

HIELFR.

1750.

June 29.

*Gronovius* in verb. *belli rigorem* :

“Nihil tale permittendum, et qui faciunt, pro hostibus habendos.”

*Grotius*, *ibid.* nu. 2.

“Primum distinguendum inter res ipsas, sunt enim quæ in bello tantum usum habent, ut arma; sunt quæ in bello nullum habent usum, ut quæ voluptati inserviunt; sunt quæ et in bello et extra bellum usum habent, ut pecunia, commeatus, *naves et quæ navibus adsunt.*”

“In primo genere verum est dictum *Amalasiunthæ* ad *Justinianum*, in hostium esse partibus qui ad bellum necessaria hosti administrat.

“Secundum genus querelam non habet.

“Nu. 3. in tertio illo genere *usus ancipitis* distinguendus erit belli status.”

Then he makes several distinctions, which *Bynkershoek* rejects, and determines in the words above cited from his tenth chapter.

*Grotius*, note on nu. 2. verb. *naves et quæ navibus adsunt.*

“*Athenis* evehi vetita lina, utres, lignum, cera, pix.”

Case to prove: pitch and tar are contraband.

1702. *Christiana Margareta*, bound from Denmark to Havre de Grace, laden with various goods and 14 barrels of tar.

Ship and lading restored to the subjects of Denmark, paying expenses, *except the 14 barrels of tar, which were condemned as prize.*

Treaty with Sweden in 1661.

Whitehall, May 18th, 1665. By His Majesty's Principal Commissioners of Prizes.

Canvass, masts, pitch, and tar, and all other naval accommodations, declared contraband goods, and so intended by his Majesty's declaration of the 22nd Feb. 1664.

MED GUDS  
HIELFE.  
1750.  
June 29.

Rules for condemning prizes, 22nd May, 1672.

Any ship carrying contraband goods shall be condemned as prize.

Opinion of Sr. Robert Wiseman. Pitch and tar contraband.

Cases of Swedish ships and cargoes restored upon condition not to sell the pitch, tar, &c., to the enemy.

1703. *Fortune, Hans Borgeson Dousoe*, master.

Laden with 15 lasts of pitch, and tar.

127 sticks of logwood.

100 pigs of lead.

20 casks of tin.

20 dozen of deals.

And 12 or 13 pounds of bees' wax.

Bound from Gottenburgh to Rouen.

Taken by Her Majesty's ships the Rochester and the Charles Galley.

Claim for the ship and cargo.

11th May, 1703, the ship and cargo decreed to be restored to the Swedish owners, they paying expenses, and *the pitch, tar, and lead ordered to be sold in England.*

1703. *St. Jacob, Erich Brinch*, master.

Laden at Stockholm with 47 lasts of tar and upwards of 7 lasts of pitch, and other things.

Bound from Rochford to Rochelle in France.

22d Nov. 1703. Ship and lading decreed to be restored, paying expenses; *but the pitch and tar to be sold in England.*

1703. *Juffrow Anna, John Albrecht*, master.

MED GUDE  
HIELPE.

1750.

JUNE 29.

Laden with pitch and tar.

Bound from Stockholm to Brest.

Taken by the Queen's ship the *Mary Galley*.

Restored paying expenses, *but the pitch and tar ordered to be sold in England.*

1703. *Warsaw Arms*, *Jacob Peterson*, master.

Laden at Stockholm with tar, pitch, and iron

Bound to Rochelle and Rochford.

Taken by the Charles and William, privateers.

23rd Feb. 1703. Ship and lading restored to subjects of Sweden, paying expenses and giving security to sell all the pitch and tar in England, and to certify thereon in three months.

1703. *Anna Catharina*, *Erich Sparman*, master.

Laden at Gottenburgh with timber, tar, and pitch.

Bound to Dieppe.

Seized in the port of Portsmouth as perquisites of Admiralty.

Decreed to be restored to the Swedes, paying expenses, and *giving bail to sell all the goods in England.*

Case where pitch and tar in a Swedish ship was condemned as prize.

1692. *Arms of Plymouth*, *Hans Holdson*, master.

Laden at Gottenburgh with pitch and tar.

Bound to France.

4th Aug. 1692.

Lading condemned.

Appealed.

26th Oct. 1692. The Lords affirmed the sentence, and remitted the cause.

17th Nov. 1692. The King in Council ordered the proceed to be restored to the owners, and all the ship's papers.

N. B. The whole prize was not then given to the captors.

MED GUDE  
HIELFS.  
1750.  
June 29.

Case of a Swedish ship condemned for want of a passport in due form.

1711. The *Staden of Stockholm*, brought in for want of a passport, by the Marquis of Caermarthen.

The Judge of the Admiralty allowed the owners to plead, and prove their property.

They proved their property, and the Judge restored the ship and lading, but pronounced for just cause of seizure.

Appealed to the Lords.

They reversed the sentence, and condemned the ship and lading for want of a passport.

Instructions, K. W. and Q. M., dated 2nd May, 1693, art. 10.

Swedish ships must have passports according to the treaty, art. 12.

Instructions, Q. Anne, 11th May, 1706.

Art. 8. Ships belonging to the subjects of Sweden shall be visited and brought up in case they are not furnished with passports, *word for word* according to the form prescribed by the 12th article of the treaty between England and Sweden, or in case there be just cause of suspicion.





# APPENDIXES.

## APPENDIX A.

EXTRACTS FROM TREATIES BETWEEN ENGLAND AND  
THE FOLLOWING COUNTRIES.

### ALGIERS.

1686. April 5. Arts. II IV.

### AMERICA.

1794. Nov. 19. Art. XVIII.

### BRAZIL.

1827. Aug. 17. Art. XV.

### DENMARK.

1669. Nov. 29.

1670. July 11. Arts. XVI. XX.  
XXI. XXXIV.

1780. July 4.

### FRANCE.

1655. Nov. 3. Art. XV.

1677. Feb. 24. Arts. II. III. IV.  
V. VI. VII.

1713. April 11. Arts. XVIII.  
XIX. XX. XXI. XXIV. XXV.  
XXVI.

1786. Sept. 26. Arts. XXI—XXIV.  
XXVI. XXVII. XXVIII.

### PORTUGAL.

1810. Feb. 19. Art. XXVIII.

### RUSSIA.

1623. June 16.

1734. Dec. 2. Arts. XI. XII.

1766. June 20. Arts. X. XI.

1797. Feb. 21. Arts. XI.

1801. June 17. Arts. I. II. III.

### SPAIN.

1604. Aug. 18. Art. XX.

1630.

1667. May 23. Arts. XIII. XIV.  
XV. XXIII. XXIV. XXV.

### STATES GENERAL.

1667. July 31. Art. III.

1668. Feb. 17. Art. II. III. IV.  
VI. VII. VIII. IX.

1674. Feb. 19.

1674. Dec. 1. Arts. II—VII.

### SWEDEN.

1654. April 11. Art. XI.

1656. Arts. II. III. IV.

1661. Oct. 21. Art. XI.

1803. July 25. Arts. I. II. III. IV.

### SPAIN AND THE NETHERLANDS.

1604. August 18. LONDON.

Article XX.—And as the said Kings and Archduke and Arch- Duchess solemnly promise never to give any warlike assistance to vol. ii. p. 131.

D'Hauterive,  
5 tom. 366.

the enemies of either of them ; so it is likewise provided, that their subjects or inhabitants, of whatever nation or quality they be, shall not, either on pretence of trade or commerce or under any other colour, assist the enemies of the said Princes, or of any one of them, in any manner, nor furnish them with money, provisions, arms, engines, guns, or instruments fit for war, nor afford any other warlike furniture ; so that whosoever shall contravene, shall be liable to the severest punishments as covenant breakers and seditious persons.

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#### RUSSIA.

1623. June 16. WESTMINSTER.

Dumont, 5 tom.  
436. D'Hau-  
terive, 7 tom.  
181.

It is further concluded, that neither of the said renowned Princes shall aid or assist the other's enemy, which at this present is or hereafter may be, with men-of-war, munition, victuals, or other suchlike material or provision for the war, nor shall suffer any armies of soldiers from other princes' dominions to be conveyed through his kingdoms and dominions against his said confederate, but on the other side shall seek to turn away that which might stretch to the enemy's purpose, and to avoid, divert, and impeach all hurtful practices which might any way arise or happen to his said confederate.

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#### SPAIN.

1630. November 15. MADRID.

Treaty, 1732,  
vol. ii. 275.  
Dumont, 5 tom.  
619.

Article XVIII.—And whereas the said Kings solemnly promise never to give any warlike assistance to the enemies of one another, so it is likewise provided that their subjects or inhabitants, of whatever nation or quality they be, shall not, on pretext of trade and commerce or under any other colour whatsoever, succour the enemies of the said Kings or any of them in any manner, nor furnish them with money, nor afford them provisions, arms, engines, guns, instruments of war, or any other warlike machines ; and whosoever shall contravene shall be most severely punished as seditious persons and breakers of faith and peace.

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#### FRANCE.

1655. November 3. WESTMINSTER.

*Between Louis XIV. and Cromwell.*

Dumont, 6 tom.  
121. D'Hau-  
terive, 2 tom.  
14.

Article XV.—That till such time as there is a possibility of making a more certain and absolute stipulation for removing the evils

<sup>1</sup> *Vide antè*, p. 94. *De Providentia*, and printed case on appeal.

and inconveniences which may happen at sea, 'tis agreed that for the space of four years next ensuing the ratification of the present treaty, all ships belonging to the subjects and people on both sides, and trading to the Mediterranean, the Eastern Sea, or the Ocean, shall be free together with their cargoes, although they have merchandize on board, even corn or pulse, which are for the use of the enemies of either, excepting nevertheless such goods as are forbidden and contraband, as gunpowder, muskets or iron barrels, and all sorts of arms, ammunition, horses, and military furniture, nor shall they transport or carry any men to the use of the enemies of either, in which case both the ships and military furniture and the merchandize shall be deemed lawful prize, and the same shall be executed with severity upon those who shall bring any men, corn, or provisions to any places whatsoever besieged by either of the parties.

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SWEDEN.

1654. April 11. UPSAL.

*Treaty between Cromwell and Christina, Queen of Sweden.*

Article XI. — Although the preceding articles of this treaty, and the laws of friendship forbid, *that either of the confederates shall give aid and assistance to the enemies of the other*, yet it must by no means be understood, that that confederate, with the subjects and inhabitants, who are not involved in war, shall carry on no manner of trade and navigation with the enemies of that confederate, who is engaged in the war. Only it is hereby provided, in the mean time, till all the rules appertaining to this matter are settled, that no merchandize of that sort which shall be deemed contraband (which shall be specified by a particular catalogue, to be settled within four months) shall be carried to the enemies of the other, without danger of being made prize, and without hopes of redemption, if they are seized by the other confederate.

Dumont, 6 tom.  
pt. 2. 80.  
Treaty, 1732,  
vol. iii. 89.  
Chalmers, vol.  
i. 20.

1656. LONDON.

*Treaty between Cromwell and Charles Gustavas, King of Sweden.*

Article II.<sup>1</sup> — Whereas in the XIth Article of the Treaty lately made at Upsal in 1654, betwixt England and Sweden, it was agreed and specified what goods and merchandize should hereafter be declared contraband and prohibited; it is now by virtue of the said

Dumont, 6 tom.  
pt. 2. 125.  
Chalmers, vol.  
i. p. 32.

<sup>1</sup> This Article is extracted from a "Collection of Treaties," London, 1732.

article established, that only those hereafter mentioned shall be reckoned prohibited, and consequently not to be disposed of to the enemies of either, viz. bombs with their fuses and other appurtenances, fire-balls, gunpowder, matches, cannon-ball, spears, swords, lances, pikes, halberts, guns, mortars, petards, granadoes, musket-rests, bandoliers, saltpetre, muskets, musket-balls, helmets, headpieces, breastplates, coats of mail, cuirasses, and the like kind of arms; soldiers, horses, with all their furniture, pistols, houlsters, belts, and all other warlike instruments; and also ships of war. Money shall also be reckoned among the goods with which the enemies are not to be supplied, and which it shall not be lawful to carry to the enemies of either, any more than the things above-mentioned, on the penalty of being made prize without hopes of redemption, if they are seized by either of the confederates. Nor shall either of the confederates permit that the enemies or rebels of the other be assisted by any of their subjects, or that their ships be sold, lent, or in any manner made use of by the enemies or rebels of the other, to his disadvantage or detriment.

Article III.—But it shall be lawful for either of the confederates, and his people or subjects, to trade with the enemies of the other, and to carry them any goods whatsoever, which are not excepted as above, without any impediment: provided they are not carried to those ports or places which are besieged by the other; in which case they shall have leave either to sell their goods to the besiegers, or to repair with them to any other port which is not besieged.

Dumont, 6 tom.  
p. 126.

Article IV. — Whereas in the XIth Article of the Treaty concluded at Upsal the 11th of April, 1654, between Sweden and England, it was agreed, that although it was precautioned and prohibited by the preceding articles that either of the confederates should give aid and assistance to the enemies of the other, yet it ought not to be understood, that that confederate who is not involved in war with the enemy of the other, shall not be allowed to carry on trade with the said enemy of that confederate: but it was only provided thereby, till there should be a farther agreement concerning this matter, that no goods or merchandize which we commonly call contraband shall be carried to the enemy of the other, without danger of being made prize, and without hopes of redemption, if they are seized by the other confederate. In like manner, whereas by the XIIth Article of the said Treaty, for the evading of all suspicions, lest the navigation or commerce of one of the confederates, whether by land or sea, should be carried on during war to the prejudice of the other confederate, or lest the goods of enemies should be carried under the disguise of the goods of friends, it was stipulated and concluded, that all ships, carriages, wares, and men, belonging to the other of the confederates, should be furnished in their journey and passage with safe conducts, commonly called passports, and certificates,

signed by the chief governor or magistrate of that province and city from whence they came; and that those forms of the passports and certificates were to be observed on which the confederates should mutually agree on both sides; and when the merchandize, goods, ships, men, of either of the confederates, and his subjects and inhabitants, shall meet or be met by the ships of war, public or private, or the subjects and inhabitants of the other confederate, in the open sea, straits, harbours, havens, lands, and other places, wheresoever or howsoever they shall come together, after producing only their safe conducts and certificates, nothing farther should be demanded of them, no inquiry whatsoever should be made into the ships, goods, or men, much less should they be injured, damaged, or molested, but should be freely let go to prosecute their journey and purpose, as is above signified.

And whereas by the XIVth Article it was stipulated, that the said Treaty and Confederacy should derogate nothing from any pre-eminence of right and dominion whatsoever of either of the confederates, in any of their seas, straits, and waters whatsoever, but that they should have and retain the same to themselves in as ample a manner as they had all along enjoyed them, and as by right to them belonged; now, therefore, that a fitting draught of such certificates and passports may be formed and observ'd, which may be answerable to the meaning of the aforesaid articles, it is agreed and concluded on both sides, that for avoiding all frauds and concealments whatsoever of the enemy's goods, and all occasions of quarrels as to any certificates and passports, such forms as are underwritten *verbatim* shall be observed, and subscribed and signed by the chief magistrate of that province and city from whence they come; that then the true names of the ships, carriages, merchandize, and masters of the ships be specified; as also the punctual days and times, without any fraud, together with other descriptions of that sort, which are expressed in the following form of a safe conduct or certificate. Wherefore, if any person who shall declare upon the oath by which he is bound to his king, state, or city, that he has given in a true account, be convicted by sufficient proof of having conceal'd any fraud by his permission under his said declaration, he shall be severely punished as a transgressor of the said oath.

We N. N. governor or chief magistrate of the province or city of N. (the title or office of the respective government of that place being added) do make known and certify, that on the day of the month of                      anno                      N. N. N. citizens and inhabitants of N., and who are engaged and bound as subjects of his most Serene Royal Majesty of Sweden, and to our city, of the most Serene Lord Protector our most Gracious Lord, and to our city, personally appeared before us in the city or town of N. in the

dominion (of his most Serene Royal Majesty of Sweden, *or* of the most Serene Lord Protector of England, just as it shall happen) and declar'd to us, that the ship or vessel called N. of about

lasts or tons, belongs to the port, city, or town of N., in the dominion of N., and that the said ship does rightfully belong to him or other subjects of his most Serene Royal Majesty of Sweden, *or* of the most Serene Lord Protector, that she is now bound directly from the port N. to the port N., laden with the following merchandize, viz. [here shall be specified the goods, with their quantity and quality; for example, about so many chests or bales, hogsheads, &c., according to the quantity and condition of the goods], and affirmed upon oath to the aforesaid N. that the said goods or merchandize belong only to the subjects of his most Serene Royal Majesty of Sweden, the most Serene Lord Protector of England; *or* expressing to whatever other nation they belong, and that N. N. have declared upon their said oath that the said goods above specified, and no others, are already put on board, *or* are to be put on board the abovenam'd ship for the said voyage, and that no part of those goods belong to any one whatsoever, but the persons abovementioned; and that no goods are disguised or concealed therein by any fictitious name whatsoever, but that the merchandize abovementioned is truly and really put on board, for the use of the said owners and no others; and that the captain of the said ship named N. N. is a citizen of the city of N. Therefore whereas after strict examination by us the abovementioned (governor or chief magistrate of the city aforesaid) it fully appears that the goods on board the said ship or vessel are free, and do truly and really belong to the subjects of his most Serene Royal Majesty of Sweden, *or* of the most Serene Protector, *or* to the inhabitants of other nations abovementioned; we do most humbly and earnestly require it of all and singular the powers by land and sea, kings, princes, republics and free cities; also of the generals of armies, admirals, commanders, officers and governors of ports, and all others to whom the custody of any harbour or sea is committed, which meet this ship in her voyage; *or* if she happen to fall in, among, *or* pass through their squadrons, *or* to stay in their harbours, that for the sake of the treaties and friendship which subsist respectively between them, *or* whoever are his superiors, and the most Serene King of Sweden, *or* the most Serene Lord Protector our most Gracious Lord, they will not only permit the said captain with the said ship N. and the men, goods, and merchandize to her belonging, to prosecute her voyage freely without lett and molestation; but also, if he think fit to depart elsewhere from such harbour, that they will show all kind offices to him and his ships as a subject of his most Serene Royal Majesty of Sweden, *or* of the most Serene Lord Protector, as they shall in like manner experience the same from our most Serene King, *or* our

most Serene Lord Protector, and all his ministers and subjects in the like or any other case. In witness whereof we have taken care that these presents signed by our hands be sealed with the seal of our city. Given at our Court.

1661. October 21. WHITEHALL.

*Treaty between Charles II. of England and Charles XI. of Sweden.*

Article XI. — Although the foregoing Articles of this Treaty and the laws of friendship do forbid, that either of the confederates shall furnish any aid or supplies to the enemies of the other, yet it is by no means to be understood, that either confederate, with his subjects and inhabitants, who is not a party in a war, shall be restrained the liberty of trade and navigation with the enemies of the other confederate who is involved in such war; provided only that no goods<sup>1</sup> called contraband, and especially money, provisions, arms, bombs with their fuzees and other appurtenances, fire-balls, gunpowder, matches, cannon-balls, spears, swords, lances, pikes, halberds, guns, mortars, petards, grenadoes, musket-rests, bandeliers, saltpetre, muskets, musket-bullets, helmets, headpieces, breastplates, coats of mail commonly called cuirasses, and the like kind of arms; soldiers, horses with the furniture; nor pistols, belts, or any other instruments of war; nor ships of war and guardships, be carried to the enemies of the other confederate, on the penalty of being made prize without hopes of redemption, if they are seized by the other confederate; nor shall either confederate permit that the rebels or enemies of the other be assisted by any of his subjects, or that any ships be sold or lent or in any manner made use of by the enemies or rebels of the other to his disadvantage or detriment. But it shall be lawful for either of the confederates and his people or subjects to trade with the enemies of the other, and to carry them any merchandize whatsoever not above excepted without any impediment; provided they are not carried to those parts or places

Dumont, 6 tom.  
pt. 2. 384.  
D'Hauterive,  
7 tom. 263.  
Chalmers, vol.  
i. p. 44.  
Dumont, 6 tom.  
386.  
D'Hauterive,  
7 tom. 263.

<sup>1</sup> Cautum tantummodo sit interim ne merces ullæ vocatæ contrabandæ et specialiter nec pecunia, nec comestus, nec arma, bombardæ cum suis ignariis et aliis ad eas pertinentibus, ignes missiles, pulvis tormentarius, fomites, alias *lunten*, globi, cuspides, enses, lanceæ, hastæ, bipennes, tormenta, tubi catapultarii, vulgo mortaria, inductiles sclopi, vulgo petardæ, glandes ignariæ, missiles, vulgo granadæ, furcæ sclopetariæ, bandeliers, sal-

petræ, sclopeti, globuli, seu pilæ quæ sclopetis jaculantur, cassides, galeæ, thoraces loricatæ vulgo *cuirasses*, et similia armaturæ genera, milites, equi, omnia ad instruendos equos necessaria, sclopethecæ, balthei et quæcunque alia bellica instrumenta, uti nec naves bellicæ et presidariæ hostibus suppeditandæ devehantur ad alterius hostes, sine periculo, si ab altero confederatorum deprehendantur, quod præcedant absque spe restitutionis.



which are besieged by the other, in which case they shall have free leave either to sell their goods to the besiegers or to repair with them to any other port which is not besieged.<sup>1</sup>

Article XII. — But least such freedom of navigation and passage of the one confederate might be of detriment to the other while engaged in war by sea or land with other nations, by concealing and conveying the goods and merchandizes of the enemies of the confederates so engaged in war under the name of a friend and ally, for the avoiding of all suspicion and fraud of such sort, it is agreed that all ships, carriages, wares, and men belonging to the other confederate, shall be furnished in their journeys and voyages with safe conducts, commonly called passports, and certificates, such as are underwritten *verbatim*, signed and subscribed by the chief magistrate of that province and city, or by the chief commissioners of the customs and duties, and specifying the true names of the ships, carriages, goods, and masters of the vessels, as also the exact dates without any fraud or collusion, together with such other descriptions of that sort as are expressed in the following form of a safe conduct and certificate. Wherefore, if any person shall affirm upon the oath by which he is bound to his king, state, or city, that he has given in true accounts, and be afterwards convicted on sufficient proof of any wilful fraud therein, he shall be severely punished, and incur the penalty of perjury.

*Formula Litterarum certifi-  
catoriarum.*

Nos N. N. gubernator aut supremus magistratus, aut teloneorum et costumarum commissarii civitatis vel provinciae N. (*apposito titulo aut officio respective gubernamenti istius loci*), notum

*English Form of the Passport.*

We N. N. governor or chief magistrate, or the commissioners of the duties and customs of the city or province of N. (*the title or office of the respective government of that place being added*),

<sup>1</sup> A similar clause is met with in other treaties; thus, in one between Denmark and the King of the Two Sicilies:—

“Article XVI.—Il sera permis aux sujets de l'un des deux rois contractans d'avoir et de continuer leur commerce avec les ennemis de l'autre; leur apporter, sans aucun empêchement, toutes sortes de marchandises, à l'exception de celles qui sont de contrabande; à moins

que ce ne soit dans une ville, port, ou endroit assiégé; auquel cas il leur sera libre toutefois de vendre leur marchandises aux assiégés, ou de les aller vendre et porter en quelque autre ville, port ou endroit qui n'est pas assiégé.” And also in the 15th Article of that between Denmark and Genoa, Paris, 13th May, 1756. *Vide* Hubner, Sur la saisie des Bâtimens Neutres, 2 tom. pt. 2. p. 144.

testatum que facimus quod die mensis anni personaliter coram nobis comparuerint in civitate aut oppido N. ditionis Sacræ Regiæ Majestatis Sueciæ, vel Sacræ Regiæ Majestatis Magnæ Britanniæ (*quemadmodum casus fuerit*), N. N. N. cives et habitantes in N. ac subditi Sacræ Regiæ Majestatis Sueciæ, vel Sacræ Regiæ Majestatis Magnæ Britanniæ, atque sub fide illius juramenti quo Sacræ Regiæ Majestatis Sueciæ domino nostro clementissimo et civitati nostræ vel Sacræ Regiæ Majestatis Magnæ Britanniæ et civitati nostræ attinentur et obstricti sunt, nobis declarare quod navis aut navigium N. dictum, N. lastarum aut tonnarum capax, pertineat ad portum, civitatem aut oppidum N. ditionis N. quodque dicta navis ejus aut subditorum Sacræ Regiæ Majestatis Sueciæ, vel Sacræ Regiæ Majestatis Magnæ Britanniæ, justo titulo propria sit, jam vero de portu N. iter vel itinera directe destinasse ad N. sequentibus onustam mercibus, videlicet (*hic specificentur bona cum quantitate et qualitate eorum, e. g. tot circiter plaustra vel involucra, tot circiter dolia, et-cetera, quemadmodum quantitas et conditio mercium fuerit*), iidemque asseveraverunt sub juramento prædicto tantum N. ex dictis bonis mercibusque ad subditos Sacræ Regiæ Majestatis Sueciæ, vel Sacræ Regiæ Majestatis Magnæ Britanniæ, vel tantum N. ad N. N. N. (*cujuscunque nationis possessores fuerint exprimatur*) pertinere, quodque N. N. N. sub fide dicti juramenti affirmaverint

do make known and certify, that on the of the month of in the year of

personally appeared before us in the city or town of N. in the dominions of his Sacred Royal Majesty of Sweden, or of Great Britain (as the case may be), N. N. N. citizens and inhabitants in N., and subjects of his Sacred Royal Majesty of Sweden, or of Great Britain, and declared to us upon the oath by which they are held and bound to our Most Gracious Sovereign his Sacred Royal Majesty of Sweden, or Great Britain, and to our city, that the ship or vessel called N. of about lasts or tons, belongs to the port, city, or town of N. in the dominions of N., and that the said ship does rightfully belong to him or other subjects of his Sacred Royal Majesty of Sweden, or Great Britain, that she is bound directly from the port of N. to the port of N., laden with the following merchandize, viz. (*here shall be specified the goods with their quantity and quality, for example, about so many chests or bales, about so many hogsheads, &c., according to the quantity and condition of the goods*), and likewise affirmed on the oath aforesaid, that so much only of the said goods and merchandize belong to the subjects of his Sacred Royal Majesty of Sweden or Great Britain, or so much of such goods belong to N. N. N. (*specifying what nation the proprietors are of*), and that they declared upon their said oath, that the said goods above speci-

dicta bona superius specificata et non alia esse imposita aut imponenda in prænominatam navim pro dicto itinere, et quod nulla pars eorum bonorum ad alium quenquam pertineat, quam hosce supradictos, neque in illa sub quocunque fictitio nomine alia bona colorata aut celata sint, sed vere ac realiter prænominatas merces in usum dictorum proprietariorum impositas esse et non aliorum, quodque dictæ navis navarchus nominatus N. cives sit civitatis N. Idcirco cum post exactam examinationem nobis supradictis (*gubernatori aut supremo magistratui aut teloneorum et costumarum commissariis civitatis prædictæ*) sufficienter constet, dictam navim aut navigium bonaque imposita libera esse ac vere et realiter pertinere ad subditos Sacræ Regiæ Majestatis Sueciæ, vel Sacræ Regiæ Majestatis Magnæ Britanniæ, vel aliarum nationum incolas supradictos, ab omnibus proinde ac singulis terrarum mariumque potestatibus, regibus, principibus, rebus publicis ac liberis civitatibus, nec non bellorum ducibus, thalassiarcho, generalibus, officialibus portuumque præfectis aliisque omnibus quibus custodia aliqua portus aut maris commissa est, quibuscunque navim hanc navigando obviam venire, quorumcunque in classes forte incidere et transire aut in portibus morari contigerit, humillime et officiose requirimus ut ratione fœderum et amicitie quæ respective unicuique aut superioribus cujuscunque est ac cum Sacrà Regia Majestate Sueciæ rege ac domino nostro clementissimo, vel cum Sacrà Re-

fied, and no others, are put on board, or are to be put on board, the above-named ship for the said voyage, and that no part of those goods belong to any other person whatsoever but those above-mentioned, and that no goods are disguised or concealed therein under any fictitious name whatsoever, but that the wares above-mentioned are truly and really put on board for the use of the said owners and no others, and that the captain of the said ship named N. is a citizen of the city of N. Therefore since it fully appears to us the governor (*or chief magistrate or commissioners of the duties and customs of the city aforesaid*), after strict examination, that the said ship or vessel, and the goods on board the same, are free, and do truly and really belong to the subjects of his Sacred Royal Majesty of Sweden or Great Britain, or to the inhabitants of other nations as aforesaid, we do most humbly and earnestly require of all and singular powers by land and sea; kings, princes, republics, and free cities; also of all generals, admirals, officers, and governors of ports, and all others guarding any harbour or sea, which may happen to meet this ship in her voyage, or if she chance to fall in among or pass through their squadrons, or to stay in their harbours, that, for the sake of the alliance and friendship which subsist respectively between them or their superiors and his Sacred Royal Majesty our most Gracious Sovereign the King of Sweden or Great Britain, they will not

giâ Majestate Magnæ Britannie rege ac domino nostro clementissimo intercedit, dictum navarchum cum navi N., et personis, rebus ac mercimoniis ad eandem spectantibus, non modo sine impedimento ac molestiis iter suum libere prosequi permittant, sed etiam, si ex dicto portu aliquovis tendere commodum duxerit, ei tanquam Sacræ Regiæ Majestatis Sueciæ vel Sacræ Regiæ Majestatis Magnæ Britannie subdito cum navi sua omnia humanitatis officia exhibeant eadem vicissim a Sacrà Regiâ Majestate Sueciæ, vel a Sacrà Regiâ Majestate Magnæ Britannie omnibusque ejus ministris et subditis in pari vel alio casu experturi. In cujus rei fidem præsentis manu subscriptas civitatis nostræ sigillo, muniri curavimus. Dabantur, et cetera.

only permit the said captain with the said ship N., and the men, goods, and merchandizes belonging to the same, to prosecute his voyage freely, without let or molestation, but also if he think fit to depart out of the said harbour elsewhere, that they will show all kind offices to him and his ship, as a subject of his Sacred Royal Majesty of Sweden or Great Britain, as they shall in like manner experience the same from his Sacred Royal Majesty of Sweden or Great Britain, and from all his ministers and subjects in the like or any other case. In witness whereof we have taken care that the said presents, signed by our own hands, be sealed with the seal of our city . Given, &c.

Therefore, when the goods, ships, or men of either confederate, or his subjects and inhabitants, shall meet in the open sea, or in any ports, havens, countries, or places whatsoever, with any ships of war or privateers, or any subjects and inhabitants of the other confederate, after producing their letters of safe-conduct and certificates aforesaid, nothing farther shall be demanded of them, nor any inquiry whatsoever made with respect to the goods, ships, or men, much less shall they be injured, damaged, or molested, but they shall be suffered freely to prosecute their voyage and purpose. But in case that the said solemn and stated Form of Certificate be not produced, or there be any other just and strong cause of suspicion why a ship ought to be searched, which shall only be deemed justifiable in such case, and not otherwise, if the goods of an enemy are then found in such ship of the confederate, that part only which belongs to the enemy shall be made prize, and what belongs to the confederate shall be immediately restored. The same rule shall likewise be observed if the goods of the other confederate are found on board a ship of an enemy. If anything be done by either party contrary to the genuine sense of this Article, both confederates shall take care that the severest punishments due for the most heinous crimes, be inflicted on such of their subjects and inhabitants as

shall offend herein, for their contempt and transgressions of the royal commands, and that full and immediate satisfaction be made to the injured party for all damage and expenses (of which the most summary proof shall be admitted) by the other confederate, or his subjects and inhabitants, without any intricate niceties of the law.

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SPAIN.

May 23. 1667.

Dumont, 7 tom.  
p. 27. D'Hau-  
terive, 5 tom.  
408. Chal-  
mers, vol. ii.  
p. 13.

Article XIII. — It shall be lawful for the ships of the people and subjects of either of the confederates to cast anchor in the coasts, bays, or any stations or roads for ships belonging to the other confederate, without being in any wise constrained to enter into any neighbouring port; and in case any ship, being forced by stress of weather, or danger of enemies or pirates, or by any other accident, should be necessitated to come into port, provided it appears that she is not bound to an enemy's port with prohibited goods, commonly called contraband (concerning which she shall not be questioned without clear proofs), such ship may sail out of port whensoever they think fit, and return to sea without any impediment whatsoever; upon that condition, however, that they do not break bulk, and that no part of the cargo be exposed to sale, or opened in port. But when they have cast anchor, and are stationed in port, to prevent all trouble whatsoever about visiting or searching, it shall be sufficient for them to have in readiness and to produce their letters of safe conduct, or other papers of their intended voyage, and certificates of their cargo; which, being exhibited and shown to the officers of either king, when the matter requires it, such ships shall be permitted to pursue their intended voyage without further molestation.

Article XIV. — The ships of war, whether they belong to either of the said kings, or be privateers belonging to the subjects of either, when they meet with any merchant ships either riding at anchor or sailing in the open sea, shall keep without cannon-shot of them, and shall not approach nearer, in order to prevent all damage and violence; but they may send their hoat or pinnace, with two or three men only on board the merchant ship, to whom the master or owner shall produce his passport and sea letters, prepared according to the form annexed to this treaty; whereby they may be certified not only of the merchandizes with which the ship is laden, but also of the place to which she belongs within either king's dominions, and name of the ship, master and owners; by which means it may

be sufficiently known what sort of goods are on board her, whether any such as are prohibited or contraband ; and who is the master or owner, and what kind of a ship it is. Moreover, such passports and sea letters shall be of the more undoubted credit and authority, that as well on the part of the King of Great Britain as of the King of Spain, they shall (if the same be found necessary) be corroborated with certain counter-signed certificates, whereby they may be more authentic, and the imposition of false ones may be prevented.

Article XV.—If any prohibited merchandizes or goods are exported out of the kingdoms, dominions, or territories of either king, by the people or subjects of the other, in such case the prohibited goods only, and no other, shall be confiscated ; nor shall the delinquent in such case incur any further penalty, unless haply he convey away and export out of the kingdoms or dominions of Great Britain any money or proper coin of that country, or wool, or what they call Fullers'-earth ; or, out of the dominions of the King of Spain, any gold or silver, either coined or uncoined ; in which cases the laws of each country shall on both sides have their due force and effect.

Article XXIII.—And in case any prohibited goods, commonly called contraband, which are here particularly mentioned, shall be discovered by the aforesaid means to be on board such ship, they shall be taken out of the ship and legally proceeded against and confiscated by the Judges of the Admiralty, or other competent Judges ; but so as the ship itself, and the other free and allowed goods found in such ship, shall in no wise be seized or confiscated on that account.

Article XXIV.—Moreover, to prevent as far as may be all controversy which may arise concerning such goods as are to be deemed prohibited or contraband<sup>1</sup>, it is declared and agreed, that under that name are comprehended all fire-arms, as war-like ordnance, muskets, mortar-pieces, petards, bombs, granadoes, fire-crancels, fire-balls, carriages of guns, musket-rests, bandoliera, gunpowder, match, saltpetre, bullets, and balls ; likewise, under the same name of prohibited goods, are comprehended all other kind of arms, as pikes, swords, pots, helmets, backs and breasts, halberts, javelins, and such like ; under the same name likewise is prohibited the

<sup>1</sup> Sous ce nom là seront comprises toute sorte d'armes à feu, comme d'artillerie, mousquets, mortiers, petards, bombes, grenades, saucisses, boulets à feu, fourchettes, bandolieres, poudres, mèche, salpêtre, balles ; comme aussi que sous le nom de marchandises défendues seront comprises et entendues

toutes autres sortes d'armes, comme piques, espées, morions, casques, cuirasses, haliebardes, javelines, et toutes autres sortes d'armes ; et que sous ce nom, on défend encore le transport de soldats, de chevaux, leurs harnois, pistolets, fourreaux, baudriers, et autres assortissemens servans à l'usage de la guerre.

What goods  
are not to be  
deemed con-  
traband.

transportation of soldiers and horses, together with their harnesses, cases of pistols, holsters, belts, and all kinds of warlike furniture whatsoever.

Article XXV.—Likewise for the avoiding of all matter of dispute and contention, it is agreed, that under the name of goods prohibited and contraband are not comprehended corn<sup>1</sup>, wheat, or any other grain, or pulse, salt, wine, oil, or any thing appertaining to the nourishment and support of life; but they shall remain free; as likewise all other goods not mentioned in the foregoing article, the transportation of which shall be allowed even to places belonging to enemies, excepting cities and places besieged and blocked up.

The form of  
certificatory  
letters.

*The Form of the Certificatory Letters to be given by the Towns and Sea Ports to the Ships and Vessels setting sail from thence.*

To all unto whom these presents shall come: We the governors, consuls, or chief magistrate, or commissioners of the customs of the city, town or province of N. do testify and make known, that N. N. master of the ship N. hath before us under solemn oath declared, that the ship N. of                tons (or thereabouts) of which he is at present master, doth belong to the inhabitants of N. in the dominions of the Most Serene King of Spain: And we being desirous that the said master may be well used and assisted in his voyage and business, do intreat all persons who shall meet him, and those of all places where the said master shall come with the said ship and her merchandize, that they would admit him favourably, treat him kindly, and receive the said ship into their ports, bays, havens, rivers, and dominions, permitting her quietly to sail, pass, repass, and trade there, or in any other places, as shall seem good to the said master, he paying all duties and customs which of right shall be due: which we will acknowledge gratefully upon the like occasions. In witness whereof we have signed these presents, and sealed them with the seal of our town.

#### STATES GENERAL.

1667. July 31.

Chalmers,  
vol. i. 153.  
D'Hauterive,  
7 tom. 5.

By the 3rd Article of this Treaty it was "covenanted and agreed that the Treaty of Navigation and Commerce made between the most

<sup>1</sup> Ne seront pas comprises les fromens, bleds, orges et autres grains ou legumes, sel, vinaigre, huile, et généralement tous ce qui appar-

tient à la nourriture et sustentation de la vie, mais qu'ils demeureront libres.

Christian King and the said States General (beginning from the 26th unto the 42nd Article inclusively), in that manner and tenor wherein they follow, there inserted in the French language, should provisionally serve for a rule and law." And these articles were introduced nearly word for word in the following treaty of February, 1668 :—

1667—8. February 17. Hague.

Article II. — This freedom of navigation and commerce shall extend to all sorts of merchandize, excepting contraband goods.

Article III. — This term of contraband goods is to be understood to comprehend only all sorts of fire arms, and their appurtenances, as cannon, muskets, mortar pieces, petards, bombs, grenades, fire crancels, pitched hoops, carriages, rests, bandeliers, powder, match, saltpetre, bullets, pikes, swords, morions, headpieces, coats of mail, halberts, javelins, horses, horse furniture, great saddle holsters, belts, and other utensils of war, called in French *Assortiments servans à l'usage de la Guerre*.

Article IV. — Under the head of contraband goods, these following shall not be comprehended : corn, wheat, or other grain ; pulse, oils, wines, salt, or generally any thing that belongs to the nourishment or sustenance of life ; but they shall remain free, as likewise all other merchandizes and commodities not comprehended in the foregoing article, and the transportation of them shall be permitted even unto places at enmity with the said *States General*, except such cities and places as are besieged, blocked up, or invested.

Article VI. — In like manner those English ships and vessels, that ride in the bays, or like places, appertaining to the dominions of the said States, which yet have neither any intention to enter into port, or when entered to unlade their cargo, shall not be bound to give an account of the cargo aboard, unless they are suspected of a design to carry contraband goods to the enemies of the States as aforesaid.

Article VII. — But in case of a lawful suspicion, the subjects of the King of Great Britain are bound to produce their passports in the ports, according to the form already prescribed.

Article VIII. — But if they draw near to the sea-coasts, or meet in the open sea with the ships of the States or their subjects, those who have fitted out those ships at their own private charge, and yet have public passports, that they may avoid all inconveniences, the ships of the States, or their subjects, shall not come within gunshot of the English, but send out a boat, and be at liberty with two or three men only to enter the English ships or vessels, to whom the captain or master shall produce his passports as aforesaid, as also

Dumont, 7 tom.  
74. D'Hauterive, 7 tom.  
12. Chalmers,  
vol. i. 163.



testimonials from the Admiralty about the propriety of the ships, according to the form annexed hereunto ; that so not only the burden may be known, but also the habitation of the captain or master, as also the name of the ship ; that by these two ways it may be known whether they carry any prohibited goods to the enemy, as also the condition of the ship, and of the captain or master, may plainly appear : and all manner of credit is to be given to the said passports and testimonials. But that they may be the more sure of the truth of them, there shall be certain royal marks and signs to them to clear them of any suspicion of falsehood.

Article IX.— But if any prohibited or contraband goods shall be found, in the manner aforesaid, in English ships or vessels, that are bound to the ports of the enemies of the States, they shall be taken out of the said ships, judgment shall be given against them by and before the Judges of the Admiralty or others, to whom the matter is cognizable ; but yet neither the ship nor vessel, nor even any of the merchandize that is not prohibited or contraband and found in the ship, shall be condemned and forfeited.

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DENMARK.

1669. Nov. 29.

1670. July 11.

Dumont, 7 tom.  
126. 132.  
D'Hauterive,  
4 tom. 461.  
Chalmers,  
vol. i. 78.

These treaties are nearly word for word the same ; the latter is probably only a renewal of the former on the accession of Christian V. to the throne of Denmark.

Article XVI.— It shall be lawful for either confederate, his people or subjects, to carry on trade with the enemies of the other, and to carry and supply them with all manner of goods (contraband goods only excepted) without any molestation, unless it be in ports and places actually besieged by the other ally ; in which case they shall be at liberty either to dispose of their goods to the besiegers, or to convey them to some other port or place which is not besieged.

Article XX.— But lest this liberty of navigation and passage for one ally, his subjects and inhabitants, might, during a war, which the other may be engaged in by sea or by land with any other state, be of prejudice to such other ally, and the goods and merchandize belonging to the enemy be fraudulently concealed under the colourable pretence of their being in amity together ; wherefore, in order to prevent all frauds of that sort, and to remove all suspicion, it is thought proper that the ships, merchandizes, and ships' crews belonging to the other ally be furnished upon their voyages with passports and certificates according to the form and tenor following, viz. :—

Placuit quod naves . . . munitæ omnino esse debeant salvi conductus, vulgo passeportus et certificationem literis, quarum tales ut infra scriptæ sunt formulæ observentur : —

Christian the Fifth, by the Grace of God King of Denmark, Norway, &c.

Christianus V., Dei gratia Rex Daniæ, Norvegiæ, Vandalorum, Gothorumque, Dux Slesvici, Holstatæ, Stormaciæ atque Ditmarsiæ, Comes in Oldenburg, and Delmenherst, &c. &c.

Charles the Second, by the Grace of God King of Great Britain, &c.

Carolus Secundus, Dei Gratia Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor, &c. &c.

Be it known to all and singular persons who shall see these our letters of passport, that our subject and citizen of our city of , hath humbly represented to us that the ship called the , of the port of , of the burthen of tons, doth appertain to him and certain other of our subjects, and that they are the sole proprietors of the same, and that the said ship is laden with certain goods, a particular whereof is contained in a cocket, which has been made out by the officers of our customs, and is now on board the said ship; and that the same belongs to our subjects, or others having an interest therein, who are the subjects of neutral powers; and that she is ready to depart from the port of , in order to proceed to some other place or places, where she may commodiously traffic with the said goods, which are not contraband, nor appertaining to either of the parties now engaged in war; or in order fairly to earn her freight; all which having been attested by our said subject, by a writing duly signed by him, and affirmed by

Notum testatumque velimus omnibus et singulis, quibus hæ nostræ salvi conductus literæ exhibebuntur, quod subditus noster et civis urbis humillime nobis significari curaverit, navem dictam lastarum capacem, ad se aliosque subditos nostros pertinere, eisque solis propriam esse, jam vero mercibus quæ schedula, quam a nostris vectigalium officialibus secum habet, continentur et ad subditos nostros aut alios neutrarum partium homines vere et realiter tantum spectant, onustam de portu iter ire immediate destinasse, indeque in alia loca ubi commodum ejusmodi mercibus non prohibitis vel ad neutram belligerantium partem pertinentibus negotiari vel etiam vecturam adinvenire poterit cursum directuram. Quod cum prædictus subditus noster scripto asseveraverit et sub navis merciumque fisco nostro addicendarum publicatione se vera protulisse juramento affirmaverit, eundem cum præfata navi hinc salvi conductus nostri literis muniendum censuimus. Proinde ab omnibus terrarum mariumque potestatibus, regibus,

virtue of his oath to be true, upon pain of confiscation of the said goods, we have thought proper to grant him these our letters of passport; and therefore we desire and request all governors of countries, and commanders at sea, all kings, princes, states, and free towns, and particularly the parties now engaged in war and their commanders, admirals, generals, officers, governors of ports, commanders of ships, captains, owners, and all others having any command at sea, or the guard of any port, whom the said ship shall happen to meet with, or to fall in with any of their fleets or ships at sea, or to arrive at any of their ports, that in virtue of the alliance and amity which subsist between us and the King or State, they not only suffer the said master, with the ship, men, goods, and all merchandizes which are on board her, to pursue his voyage towards any place whatsoever, with full liberty, without being any ways molested, hindered or detained, but that they likewise show him all kind offices of civility, as unto our subject, if any occasion should offer, which we and our subjects shall be ready to acknowledge on the like or any other occasion. Given this day of, in the year.

We the president, consuls, and senators of the town of, do attest and certify that N. N., citizen and inhabitant of the city or town of, on the day of, in the year, came and appeared personally before us, and declared to us by

principibus, rebus publicis, ac liberis civitatibus, imprimis vero a partibus bello hoc tempore se lacessentibus earumque ducibus, thalasiarchis generalibus officialibus navium portuumque præfectis capitaneis, instructoribus, aliisque omnibus quibus custodia aliqua maris aut portus commissa est, quibuscumque navem hanc navigando obviam venire, quorumque in classes et naves forte incidere aut in portibus morari contigerit, respective amice, benevole, et clementer requirimus ut ratione forderum et amicitie quæ nobis cum unoquoque rege vel republica intercedit dictum navarchum cum navi, personis, rebus ac mercimoniis omnibus illi impositis non solum libere ac absque ullâ molestiâ, detentione aut impedimento quocunque iter suum prosecui permittant, sed etiam eadem tanquam nostro subdito, si opus fuerit, omnia humanitatis officia exhibeant, eadem vicissim a nobis nostrisque in pari vel alio casu experturi.

Dabantur die mensis . anno ,

Nos præses, consules, et senatores civitatis, attestamus et certificamus quod die mensis anno personaliter coram nobis comparuerit, civis et incola civitatis vel oppidi atque sub jramento, quo Serenissimæ Regiæ

virtue of the oath, by which he is bound to our Sovereign Lord the King, that the ship or vessel named \_\_\_\_\_, of the port of \_\_\_\_\_, of the burthen of \_\_\_\_\_ tons, belongs to the port, city, or town of \_\_\_\_\_, in the province of \_\_\_\_\_, and that the said ship does really and truly appertain to him, and is now ready to depart directly from the port of \_\_\_\_\_, laden with the goods specified in the cocket which he hath received from the officers of the customs, and that he hath affirmed upon his said oath, that the above-mentioned ship, together with the goods and merchandizes with which she is laden, belongs to his said Majesty's subjects only, and that she does not carry any prohibited goods appertaining to either of the parties now engaged in war.

In witness where, we have caused the present certificate to be signed by the syndick of our town, and have thereunto put our seal. Given, &c.

Majestati domino nostro clementissimo attinetur et obstrictus est, nobis declaraverit quod navis aut navigium dictum \_\_\_\_\_, lastarum capax, pertineat ad portum, civitatem vel oppidum in provinciâ \_\_\_\_\_, quodque dicta navis ei et aliis Serenissimæ Regiæ Majestatis domini nostri clementissimi subditis solis justo titulo propria sit, jam vero de portu . . . iter directe destinasse, iis onusta mercibus, quæ schedula a vectigalium officialibus accepta continentur, idemque asseveraverit sub juramento prædicto præfatur navem cum mercibus et bonis ad Serenissimæ Regiæ Majestatis subditos tantum pertinere nullasque merces prohibitas quæ ad alterutram hoc tempore belligerantium partem spectant vehere. In quorum fidem hanc certificationem a civitatis hujus syndico subscribi et sigille nostro muniti curavimus.

Dabatur, &c.

Article XXI.—Whenever therefore any merchandizes, goods, ships, and men of either confederate, his subjects or inhabitants shall be met with in the open sea, straits, ports, roads, lands, or in any places whatsoever, by any public ships of war or privateers, or by the men, subjectt, or inhabitants of the other confederate, upon exhibiting the said letters of passport only, nothing further shall be required of them, nor shall any further search or inquiry be made in relation to the goods, ships, or men; much less shall they be any ways injured or molested, but they shall be most freely dismissed, in order to pursue their intended course and voyage: but in case this solemn and stated form of the passport and certificate be not exhibited, or there appear other just and strong cause of suspicion, then such ship ought to be visited; which however is to be understood to be allowed of in such case only and not otherwise: if any thing shall be done by either party against the other confederate contrary to the true and genuine sense of this article, both confederates shall

All ships to be dismissed on exhibiting their passports, unless upon strong suspicion.

take care that their subjects and inhabitants respectively, who shall transgress therein, be severely punished, and that ample and immediate satisfaction be made to the other confederate, his subject and inhabitants, for all losses, injuries, and charges so sustained or incurred.

Prohibited goods on board ships of either party not to be meddled with until brought on shore and duly inventoried.

Article XXXIV.—If any ship of war of either crown shall happen to take a ship belonging to the other, laden with prohibited goods, it shall not be lawful for the commander of such captor to open or break up any chests, casks, or packs found therein, nor to remove or any ways alienate any of the goods until they are first brought on shore, and an inventory be made of them in the presence of the judges of maritime causes.

1673-4. February  $\frac{1}{2}$ . Westminster.

*Secret Article.*

Dumont, 7 tom. 255. Treaty, 1732, vol. iii. 281.

It is also agreed by this secret article that neither of the said parties shall give nor consent that any of their subjects or inhabitants shall give any aid, favour, or council, directly or indirectly, by land or by sea, or on the fresh waters, nor shall furnish nor consent that the subjects and inhabitants of their dominions and countries shall furnish any ships, soldiers, mariners, provisions, monies, instruments of war, gunpowder, or any other things necessary for making war, to the enemies of the other party, of any rank or condition whatsoever.

1674. December 1. London.

*Marine Treaty.*

Dumont, 7 tom. 282. D'Hauterive, 7 tom. 14. Chalmers, vol. i. 177.

Article II.—Nor shall this freedom of navigation and commerce be interrupted by reason of any war, as to any kind of merchandizes; but such freedom shall extend to all merchandize which might be carried in time of peace, those only excepted which follow in the next article and are comprehended under the name of contraband.

Article III.—Under the name of contraband or prohibited goods shall be comprehended only arms, pieces of ordnance, with all implements belonging to them, fireballs, powder, match, bullets, pikes, swords, lances, spears, halberds, guns, mortar-pieces, petards, grenades, rests, bandeliers, saltpetre, musquets, musquet-shot, helmets, corsets, breast-plates, coats of mail and the like kind of armature,

soldiers, horses and all things necessary for the furniture of horses, holsters, belts, and all other warlike instruments whatsoever.

Article IV.—The following goods shall not be deemed contraband, viz., all kinds of cloths, and all other manufactures woven of any kind of wool, flax, silk, cotton, or any other material, all sorts of clothing and garments, together with the materials whereof they are made, gold and silver as well coined as not coined, tin, iron, lead, copper, and coals; as also wheat, barley, and all other kind of corn or pulse, tobacco, and all kinds of spices, salted and smoked flesh, salted and dried fish, butter, cheese, beer, oil, wine, sugar, and all kinds of salt, and in general all provisions which serve for the nourishment and sustenance of life: likewise all kind of cotton, hemp, flax, and pitch and ropes, sails and anchors; also masts and planks, boards and beams of any kind of wood, and all other materials requisite for building or repairing ships; but they shall be wholly reputed amongst free goods even as all other wares and things which are not comprehended in the next preceding article, so that the same may be freely transported and carried by the subjects of his said Majesty even unto places at enmity with the said state, as also, on the other side, by the subjects of the said state to places under the obedience of the enemies of his said Majesty, except only to towns or places besieged, blocked up, or invested (*Gallice, bloquées ou investées*).

Article V.—And that all differences and contentions on both sides, by sea and land, may from henceforth cease and be utterly extinguished, it is agreed that all kinds of ships and vessels whatsoever, belonging to the subjects of his said Majesty, entering or being entered into any road or port under the obedience of the lords the states, and purposing to pass from thence, shall be only obliged to show unto the officers of such port, or to the captains of the guard-ships or privateers belonging to the states (if any happen there to be), their passport, according to the form annexed to this present treaty; nor shall any money or any thing else be exacted from them upon that account.

Article VI.—But if any ship belonging to the subjects of his Majesty of Great Britain shall, in the open sea or elsewhere out of the dominion of the said states, meet any ships of war of the said lords the states, or privateers belonging to their subjects, the said ships of the lords the states or of their subjects shall keep at a convenient distance, and only send out their boat with two or three men only to go on board such ships and vessels of his Majesty's subjects, in order that the passport (or sea brief) concerning the property thereof, according to the form hereunto annexed, may be produced to them by the captain or master of such ship or vessel belonging to the subjects of his Majesty; and the said ships so producing the same shall freely pass, and it shall not be lawful to molest, search,

detain, or force such ship from her intended voyage. And all the subjects of the lords the states shall enjoy in all things the same liberty and immunity; they, in like manner, showing their passport (or sea brief) made out according to the form proscribed at the foot of this treaty.

Article VII.—But if any ship or vessel belonging to the English, or other subjects of Great Britain, shall be met making<sup>1</sup> into any port belonging to an enemy of the lords the states; or, on the other side, if any ship belonging to the United Provinces of the Netherlands, or other subjects of the lords the states, shall be met with in her way making<sup>2</sup> for any port under the obedience of the enemies of his said Majesty, such ship shall show not only a passport (or sea brief), according to the form hereunder prescribed, wherewith she is to be furnished, but also her certificate, or cocket, containing a particular account of the goods on board, given in the usual form by the officers of the customs of that port from whence she came, whereby it may be known whether she is laden with any of the goods prohibited by the third article of this treaty.

Article VIII.—But in case that, upon showing such cockets containing a particular account of the goods on board, given in the usual form by the officers of the customs of that port from whence the said ship sailed (concerning the showing whereof it is above agreed) either party shall discover any of that kind of goods which by the third article of this treaty are declared to be contraband or prohibited, consigned to any port under the obedience of their enemies, it shall not then be lawful to open the hatches of such ship in which the same shall happen to be found, whether she belongs to the subjects of his Majesty or to the lords the states; nor to unlock or break open any chests, packs, or casks in the same, nor to convey away any the least part of the merchandizes, before the whole cargo be first put on shore in the presence of the officers of the Admiralty, and an inventory made of the same; neither shall it be lawful to sell, exchange, or any way alienate the same, before such prohibited goods shall be duly and lawfully proceeded against; and that the judges of the Admiralty respectively shall, by sentence, have declared the same confiscated. Provided always, that as well the ship itself as the rest of the goods found in the same, which by this treaty are to be reputed free, shall not be detained upon pretence of their being infected by such prohibited goods, much less confiscated as lawful prize. And if a part only and not the whole of the lading shall consist of contraband or prohibited goods, and the master of the ship shall be willing and ready to deliver them to the captor who dis-

<sup>1</sup> *Quod si navi, &c. ad portum aliquem Dominis inimicum tendenti, obviam fit.*

<sup>2</sup> *Portum aliquem hostibus dictæ legiæ majestatis obtemperatur petenti.*

covered the same, in that case the captor shall not compel the ship to go out of her course to any port he thinks fit, but shall forthwith dismiss her, and upon no account hinder her from freely pursuing her intended voyage.

*The Form of the Passport (or Sea Brief) to be asked of and given by the Burgo-Master of the Cities and Ports of the United Netherlands, to the Ships or Vessels sailing from thence, according to the purport of the Fifth Article of this Treaty.*

To the Most Serene, Most Illustrious, Most Mighty, Most Noble, Most Honourable, and and Most Prudent Emperors, Kings, Governors of Commonwealths, Princes, Dukes, Barons, Lords, Burger-Masters, Schepens, Counsellors, Judges, Officers, Justices, and Rulers of all Cities and Places as well Ecclesiastical as Secular, to whom these presents shall be shown: We the burger-masters and rulers of the city of

do certify, that  
 , master or skipper of the ship , appeared before us, and declared by solemn oath that the said ship called the , containing about , lasts, of which he is at present master or skipper, belongeth to the inhabitants of the United Netherlands. So help him God. And in regard it would be most acceptable to us that the said master or skipper be assisted in his just and lawful affairs, we do request you, and every of you, wheresoever the said master or skipper shall arrive with his ship, and the goods laden on board and

*Formula Literarum Commeatus, vulgo Literarum Maritimarum, petendarum, dandarumque à Consulibus Civitatum et Portuum Uniti Belgii omnibus Navibus Navigiisve inde vela facientibus, secundum Articuli quinti hujus Tractatus dispositionem.*

Serenissimis, Illustrissimis, Potentissimis, Nobilissimis, Spectatissimis, Prudentissimis Dominis Imperatoribus, Regibus, Rerumpublicarum Moderatoribus, Principibus, Ducibus, Comitibus, Baronibus, Dominis Consulibus, Scabinis, Senatoribus, Judicibus, Officialibus, Justitiariis, et Rectoribus omnium Civitatum et Locorum tam Ecclesiasticorum quam Secularium quibus hæ exhibebuntur: Consules et rectores civitatis , notum facimus , magistrum seu præpositum navis , se nobis stilisse et solenni jurejurando affirmasse dictam navem cui nomen est , mensuarum quas vulgo lastas vocant, plus minus , cujus ille hoc tempore magister sive præpositus est, per linere ad incolas provinciarum Uniti Belgii. Ita eum Deus adjuvet: Cum autem acceptissimum nobis foret prædictum magistrum seu præpositum in iis, quæ probe, justeque ab eo agenda erunt, adjuvari, rogamus vos universos et singulos, ubicunque dictus magister seu præ-



carried in her, that you will please to receive him courteously, and use him kindly, and admit him, upon paying the lawful and usual customs and other duties, to enter into, remain in, and pass from your ports, rivers, and dominions, and there to enjoy all kind of right of navigation, traffick, and commerce, in all places where he shall think fit; which we shall most willingly and readily acknowledge upon all occasions: in testimony and confirmation whereof we have caused the seal of our city to be put to these presents, dated at , in the day of , in the year of our Lord .

positus navem, mercesque in ea invecas et illatas appellet, velitis, jubeatis eum benigne recipi, humaniter tractari sub legitimum, consuetorumque vectigalium ac alia rum rerum solutione admitti ingredi, novanere, egredi portus, flumina et dominia, vestra et omnimodo navigationis, mercatus commerciorum ac promercalium jure specieque uti, omnibus in locis, quibus hoc ei melius rectius visum fuerit grato animo id rependere vobis paratissimi semper promptissimique, in quorum majorem fidem et testimonium hæc civitatis nostræ sigillo signari curavimus. Datas in die anno Domini.

## FRANCE.

1677. FEBRUARY 24. ST. GERMAIN-EN-LAYE.

Dumont, 7 tom.  
327. D'Hauterive, 2 tom.  
23. Chalmers, vol. i.  
328. Treaty, 1732, vol. i.  
127.

Article II. — Trade may be carried during a war with the same merchandizes with which they may trade in time of peace; but with an exception of all contraband goods as explained in the following article: —

Article III.—The good prohibited and contraband are cannon and their furniture, fire-arms, powder, match, bullets, pikes, swords, lances, halberts, partisans, bombs, mortars, petards, granadoes, musket-stocks, bandaliers, saltpetre, ball, head-pieces, shields, cuirasses, and the like armour; under the same name also, the transporting of soldiers, horses, harnesses, pistol-stocks, belts, and other things appertaining to and used in war, is prohibited.

Article IV.—The following merchandizes are not to be comprised in the number of prohibited and contraband goods; viz., woollen, linen, silk, cotton, or any other stuffs and manufactures whatsoever; all sorts of clothes and dresses made of stuffs or any other matter; gold or silver, coined or uncoined; tin, iron, lead, copper, coal, corn, barley, and other grain and pulse, tobacco, spices, salted and dried

flesh, dry and salt fish, cheese, butter, beer, oil, wine, sugar, salts, and everything appertaining to the nourishment and support of life ; neither are cottons, hemp, flax, pitch, cordages, sails, anchors, masts, boards, logs, and wood wrought of all sorts of trees, and that serve for building ships, or the repair of them ; but the said commodities shall remain free, as well as all others in general that are not comprehended in the preceding article ; in such sort that the subjects of the most Christian King may not only transport the same from a place where there is a neutrality, to any other that is neutral, or from a place or port where there is a neutrality, to any other that is an enemy to the most serene King of Great Britain ; or, lastly, from a place that is an enemy, to a place that is neutral ; but also from a port or other place belonging to the enemies of the said King, to another also belonging to his enemies ; whether these ports or other places be under the obedience of one prince or state, or of several princes or states, with one or all of which the King of Great Britain is at war. The subjects of the most serene King of Great Britain may reciprocally transport the said merchandizes, not only from one place where there is a neutrality, to another that is neutral, or from a place or port where there is a neutrality, to another that is an enemy to the most Christian King ; or, lastly, from a place that is an enemy, to another where a neutrality is observed, but also from a port or other place belonging to the enemies of the said King, to another appertaining also to his enemies ; whether these ports or other places be under the obedience of one prince or state, or of several princes and states, with one or all of which the said most Christian King is at war ; but yet such things must not be carried at all to towns and places besieged, blocked up, or invested.

Article V. — In order to terminate all differences that may arise, either by sea or land, it has been agreed, that the ships or other vessels belonging to the subjects of the most Christian King, which shall enter into the havens or ports of the King of Great Britain, and would go elsewhere from thence, shall not be detained any longer than to produce and exhibit their passports and sea briefs, the form whereof is annexed to this treaty, to the officers of the said King. Or if there be in the said ports or havens any ships of war belonging to the King of Great Britain, or privateers to the commanders of the said ships, so that the said commanders shall not exact or demand any money or any thing else of them upon that account ; but if the ships or other vessels appertaining to the subjects of the most Christian King be met with in the open sea, or such places as are not under the dominion of the King of Great Britain, by the ships of war of the said King, or others fitted out by his subjects ; the said ships may, by keeping at a reasonable distance off, send their boat on board the said ships or vessels of the subjects of the most Christian King, and shall put two or three men only on board, to the end that

the master or owner may exhibit to them his passport, after which they shall freely pass, without being any way molested, searched, stopped, or forced to alter their course. The subjects of the King of Great Britain shall enjoy the same freedom and immunities, by producing their passports, according to the form before mentioned.

Article VI.—If any vessel or bark belonging to the subjects of the most Christian King, and passing to a country that is an enemy to the King of Great Britain, meets with a man of war in her passage; in like manner, if a ship appertaining to the English, or other subjects of the King of Great Britain, is met with going towards a port that is an enemy to the most Christian King, it will not be enough for her to show her passports; but also certificates, in due and authentic form, from the officers and visitors of the custom-house, of its going out of the port from whence she departed, containing an account of all the cargo on board her; to the end it may be known, whether there are any contraband goods there, and, of the nature of those that are particularised in the third article of this treaty.

Article VII.—If, upon producing the said certificates, it appears, that there are contraband goods on board, consigned for an enemy's port; yet it shall not be allowable to go under deck, nor to open or break any chests, bales, casks, or tuns, nor take the least thing out of her, till she is brought into a port, where a just inventory shall be taken in the presence of the custom-house officers; and nothing thereof shall be sold or bartered till after a fair trial before the judge of the Admiralty Court, and sentence be passed for the confiscation of such merchandizes. In which confiscation, nevertheless, the hulk of the vessel and the lawful merchandize on board her, shall not be comprised, nor may such lawful merchandize be detained, much less declared good prize, upon the account of the said contraband merchandize. If the vessel is laden but in part with contraband goods, and that the master thereof offers at the same time to put them into the captor's hands, he shall not oblige him to go into any port, but suffer him to continue his voyage.

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#### ALGIERS.

1686. April 5.

Chalmers, vol.  
ii. 379.

Article II. — That any of the ships or other vessels belonging to the said King of Great Britain, or to any of his Majesty's subjects, may safely come to the port of Algiers, or to any other port or place

of that kingdom, there freely to buy and sell, paying the usual customs of 10*l.* per cent. as in former times, for such goods as they sell, and the goods they sell not they shall freely carry on board without paying any duties for the same; and, that they shall freely depart from thence whensoever they please without any stop or hindrance whatever. As to contraband merchandize, as powder, brimstone, iron, plank, and all sorts of timber fit for building of ships, ropes, pitch, tar, fusils, and other habiliments of war, his said Majesty's subjects shall pay no duty for the same to those of Algiers.

Article IV. — That the Algiers ships of war, or other vessels, meeting with any merchant ships or vessels of his said Majesty's subjects, not being in any of the seas appertaining to his Majesty's dominions, may send on board one single boat with two sitters only besides the ordinary crew of rowers; and that no more shall enter such merchant ship or vessel, without express leave from the commander thereof, but the two sitters alone; and, that upon producing a pass under the hand and seal of his Majesty, or whomsoever he shall appoint to be Lord High Admiral, or to execute the office of Lord High Admiral for England and Ireland, or of the Lord High Admiral for Scotland, for the said kingdoms respectively, that the said boat shall presently depart, and the merchant ship or vessel shall proceed freely on her voyage; and any of the ships of war or other vessels of his said Majesty meeting with any ships or other vessels of Algiers, if the commander of any such Alger ship or vessel shall produce a pass firm'd by the chief governors of Algiers, and a certificate from the English Consul presiding there, the said Alger ship or vessel shall proceed freely.

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FRANCE.

1713. April 11. *UTRECHT.*

Article XVIII. — This liberty of navigation and commerce shall extend to all kind of merchandizes, excepting those only which follow in the next article, and which are signified by the name of contraband.

Article XIX. — Under this name of contraband or prohibited goods, shall be comprehended arms, great guns, bombs, with their fusees, and other things belonging to them, fire-balls, gunpowder, match, cannon-ball, pikes, swords, lances, spears, halberds, mortars, petards, grenadoes, saltpetre, muskets, musket-ball, helmets, head-

Dumont, vol. viii. 345.  
D'Hauterive, vol. ii. 45.  
Chalmers, vol. i. 390.

pieces, breast-plates, coats of mail, and the like kinds of arms, proper for arming soldiers, musket-rests, belts, horses with their furniture, and all other warlike instruments whatever.

Article XX. — These merchandizes which follow, shall not be reckoned among prohibited goods, that is to say, all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever ; all kinds of clothes and wearing apparel, together with the species whereof they are used to be made ; gold and silver, as well coined as uncoined ; tin, iron, lead, copper, brass, coals : as also wheat and barley, with any other kind of corn and pulse ; tobacco, and likewise all manner of spices, salted and smoaked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salt, and in general all provisions which serve for the nourishment of mankind, and the sustenance of life : furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail-cloths, anchors, and any parts of anchors ; also ship-masts, planks, boards and beams, of what trees soever ; and all other things proper either for building or repairing ships ; and all other goods whatever, which have not been worked into the form of any instrument, or thing prepared for war, by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use ; all which shall wholly be reckoned among free goods, as likewise all other merchandizes and things which are not comprehended, and particularly mentioned in the preceding article ; so that they may be transported and carried in the freest manner by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted, as are at that time besieged, blocked up round about, or invested.

Article XXI. — To the end that all manner of dissensions and quarrels may be avoided and prevented on one side and the other, it is agreed, that in case either of their royal Majestys, who enter into this alliance, should be engaged in war, the ships and vessels belonging to the subjects of the other ally must be furnished with sea-letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master and commander of the said ship, that it may appear thereby, that the ship really and truly belongs to the subjects of one of the princes : which passports shall be made out and granted, according to the form annexed to this treaty. They shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year. It is likewise agreed, that such ships being laden, are to be provided, not only with passports, as above-mentioned, but also with certificates, containing the several particulars of the cargo, the place whence the ship sailed, and whither she is bound ; that so it may be known whether any forbidden or contraband goods as are enumerated in the 19th article of this treaty, be on board the same ; which certificates

shall be made out by the officers of the place whence the ship set sail, in the accustomed form. And if any one shall think it fit or advisable to express in the said certificates the person to whom they belong, he may freely do so.

Article XXIV. — But in case the ships of the subjects and inhabitants of both their Most Serene royal Majestys, either on the sea-coast, or on the high seas, shall meet with the men of war of the other, or with privateers, the said men of war and privateers, for preventing any inconveniences, are to remain out of cannon-shot, and to send a boat to the merchant-ship which has been met with, and shall enter her with two or three men only, to whom the master or commander of such ship or vessel shall shew his passport, concerning the property thereof, made out according to the form annexed to this present treaty; and the ship which shall exhibit one, shall have free passage, and it shall be wholly unlawful any way to molest her, search, or compel her to quit her intended course.

Article XXV. — But that merchant-ship of the other party, which intends to go to a port at enmity with the other confederate, or concerning whose voyage, and the sort of goods on board, there may be just suspicion, shall be obliged to exhibit, either on the high seas, or in the ports and havens, not only her passports, but her certificates, expressing, that they are not of the kind of goods prohibited which are specified in the 19th article.

Article XXVI. — But if one party, on exhibiting the above said certificates, mentioning the particulars of the things on board, should discover any goods of that kind which are declared contraband or prohibited by the 19th article of this treaty, to be designed for a port subject to the enemy of the other, it shall be unlawful to break up the hatches of that ship, wherein the same shall happen to be found, whether she belong to the subjects of Great Britain or of France; to open the chests, packs, or casks therein, or to remove even the smallest parcel of the goods, unless the lading be brought on shore, in the presence of the officers of the Court of Admiralty, and an inventory thereof be made: but there shall be no allowance to sell, exchange, or alienate the same in any manner, unless after due and lawful process has been had against such prohibited goods, the Judges of the Admiralty respectively shall, by a sentence pronounced, have confiscated the same; saving always as well the ship itself, as the other goods found therein, which by this treaty are to be esteemed free: neither may they be detained on pretence of their being, as it were, infected by the prohibited goods, much less shall they be confiscated as lawful prize. But if not the whole cargo, but only part thereof, shall consist of prohibited or contraband goods, and the commander of the ship shall be ready and willing to deliver them to the captor, who has discovered them, in such case the captor, having received those goods, shall forthwith discharge the ship, and not hin-

der her, by any means, freely to prosecute the voyage on which she was bound.

*Form of the Passports and Letters which are to be given in the Admiralty of France to the Ships and Barks which shall go from thence, according to 21st Article of this present Treaty.*

Lewis, Count of Thoulouse, Admiral of France, to all who shall see these presents, greeting: We make known that we have given leave and permission to \_\_\_\_\_, master and commander of the ship called \_\_\_\_\_ of the town of \_\_\_\_\_, burthen \_\_\_\_\_ tons or thereabouts, lying at present in the port and haven of \_\_\_\_\_, and bound for \_\_\_\_\_, and laden with \_\_\_\_\_; after that his ship has been visited, and before sailing, he shall make oath before the officers who have the jurisdiction of maritime affairs, that the said ship belongs to one or more of the subjects of his Majesty, the act whereof shall be put at the end of these presents; as likewise that he will keep, and cause to be kept by his crew on board, the marine ordinances and regulations, and enter in the proper office a list signed and witnessed, containing the names and surnames, the places of birth and abode of the crew of his ship, and of all who shall embark on board her, whom he shall not take on board without the knowledge and permission of the officers of the marine; and in every port or haven where he shall enter with his ship, he shall shew this present leave to the

*Formulaire des Passeports et Lettres, qui se doivent donner dans l'Amirauté de France aux Navires et Barques qui en sortiront, suivant l'Article vint-un du présent Traité.*

Louis, Comte de Toulouse, Amiral de France, à tous ceux qui ces présentes lettres verront, salut: Sçavoir faisons, que nous avons donné congé et permission à \_\_\_\_\_, maître et conducteur du navire nommé \_\_\_\_\_, de la ville de \_\_\_\_\_, du port de \_\_\_\_\_, tonneaux ou environ, étant de présent au port et havre de \_\_\_\_\_, de s'en aller à \_\_\_\_\_, chargé de \_\_\_\_\_; après que la visitation aura été faite de son navire; avant que de partir, fera serment devant les officiers qui exercent la juridiction des causes maritimes comme le dit vaisseau appartient à un ou plusieurs des sujets de sa Majesté, dont il sera mis acte au bas des présentes, comme aussi de garder et faire garder par ceux de son équipage les ordonnances et règlements de la marine, et mettre au greffe le rôle signé et vérifié, contenant les noms et surnoms, la naissance et demeure des hommes de son équipage et tous ceux qui s'embarqueront; lesquels il ne pourra embarquer sans le son et permission des officiers de la marine et en chacun port ou havre où il entiera avec son navire fera apparoir aux officier et juges de la marine du présent congé, et leur fera fidelle rap-

officers and judges of the marine, and shall give a faithful account to them of what passed and was done during his voyage, and he shall carry the colours, arms, and ensigns of the King and of us during his voyage. In witness whereof, we have signed these presents, and put the seal of our arms thereunto, and caused the same to be countersigned by our secretary of the marine at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 17 \_\_\_\_\_. Signed Lewis, Count of Thoulouse, and underneath by \_\_\_\_\_.

port de ce qui sera fait et passé durant son voyage; et portera les pavillons, armes, et enseignes du Roi et les nôtres durant son voyage. En témoin de quoi, nous avons fait apposer notre seing et le scel de nos armes à cea présentes et icelles fait contre signer par notre secrétaire de la marine à \_\_\_\_\_ jour de \_\_\_\_\_ mil sept cens \_\_\_\_\_.  
Signé Louis, Comte de Thoulouse, et plus bas par \_\_\_\_\_.

*Form of the Act containing the Oath.*

*Formulaire de l'Acte contenant le Serment.*

We, \_\_\_\_\_, of the Admiralty of \_\_\_\_\_, do certify that \_\_\_\_\_, master of the ship named in the above passport, hath taken the oath mentioned therein. Done at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 17 \_\_\_\_\_. .

Nous, \_\_\_\_\_, de l'Amirauté de \_\_\_\_\_, certifions que \_\_\_\_\_, maître du navire nommé au passeport ci-dessus a prêté le serment mentionné en icelui. Fait à \_\_\_\_\_, le \_\_\_\_\_ jour de \_\_\_\_\_, 17 \_\_\_\_\_. .

*Form of the Certificates to be required of and to be given by the Magistrate or Officers of the Customs of the Town and Port, in their respective Towns and Ports, to the Ships and Vessels which sail from thence, according to the directions of the 21st Article of this present Treaty.*

We, A. B., magistrate (or) officers of the customs of the town and port of C., do certify and attest, that on the \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year of our Lord 17 \_\_\_\_\_, D. E. of F. personally appeared before us, and declared by a solemn oath, that the ship or vessel called G., of about \_\_\_\_\_ tons, whereof H. I. of K., his usual place of habitation, is master or commander, does rightfully and properly belong to him and others, subjects of her most serene Majesty our most gracious Sovereign, and to them alone; that she is now bound from the port of L. to the port of M., laden with the goods and merchandize hereunder particularly described and enumerated, that is to say, as follows.



In witness whereof we have signed this certificate, and sealed it with the seal of our office. Given the                      day of the month of                      , in the year of our Lord 17   .

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D'Hauterive,  
tom. vii. 183.  
Chalmers, vol.  
i. p. 2.

## RUSSIA.

1734. December 2. St. PETERSBURGH.

Free trade for  
one party with  
an enemy of  
the other,  
under restric-  
tions.

Article XI.—The subjects of either party may freely pass, repass, and trade in all countries which now are, or hereafter shall be at enmity with the other of the said parties, places actually blocked up or besieged only excepted; provided they do not carry any warlike stores or ammunition to the enemy; as for all other effects, their ships, passengers, and goods shall be free and unmolested.

Warlike am-  
munition spe-  
cified and pro-  
hibited.

Article XII.—Cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, fuzes, flints, matches, powder, saltpetre, sulphur, cuirasses, pikes, swords, belts, pouches, cartouch-boxes, saddles and bridles, in any quantity beyond what may be necessary for the ship's provision, and may properly appertain to and be judged necessary for every man of the ship's crew or for each passenger, shall be deemed ammunition of war; and if any such be there found, they may seize and confiscate the same according to law; but neither the vessels, passengers, or the rest of the goods shall be detained for that reason, or hindered from pursuing their voyage.

1766. June 20. St. PETERSBURGH.

Chalmers, vol.  
i. pp. 2. 7.  
D'Hauterive,  
tom. vii. p.  
197.

Article X.—Permission shall be granted to the subjects of the two contracting parties to go, come, and trade freely with those states with which one or other of the parties shall at that time or at any future period be engaged in war, provided they do not carry military stores to the enemy. From this permission, however, are excepted places actually blocked up, or besieged as well as by sea as by land; but at all other times, and with the single exception of military stores, the above said subjects may transport to these places all sorts of commodities, as well as passengers, without the least impediment. With regard to the searching of merchant ships, men-of-war and privateers shall behave as favourably as the reason of the

war at that time existing can possibly permit towards the most friendly powers that shall remain neuter, observing as far as may be the principles and maxims of the law of nations that are generally acknowledged.

Article XII.—All cannon, mortars, muskets, pistols, bombs, grenades, bullets, balls, fusees, flint-stones, matches, powder, salt-petre, sulphur, breast-plates, pikes, swords, belts, cartouch-bags, saddles, and bridles, beyond the quantity that may be necessary for the use of the ship, or beyond what every man serving on board the ship and every passenger ought to have, shall be accounted ammunition or military stores, and if found shall be confiscated according to law as contraband goods or prohibited commodities; but neither the ships, nor passengers, nor the other commodities found at the same time, shall be detained or hindered to prosecute their voyage.

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#### DENMARK.

1780. July 4.

#### *Explanatory of Third Article of Treaty of Copenhagen in 1670.*

The two contracting sovereigns reciprocally engage for themselves and their successors not to furnish to the enemies of the one or the other in time of war any succour, neither soldiers, nor vessels, nor any goods or merchandizes called contraband, in like manner to prohibit their subjects from so doing, and to punish severely and as infractors of the peace those who shall dare to act contrary to their prohibitions in regard thereto. But not to leave any doubt as to what ought to be understood by the term contraband, it is agreed that nothing under that denomination is to be understood but arms as well fire as other sorts, with what relates thereto, as cannon musquets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musquet rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horses, horse-furniture, holsters, belts, and generally all other implements of war, as also timber for ship-building, tar or resin, sheet copper, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted.

But it is expressly declared that in this kind of contraband goods

Chalmers, vol.  
i. p. 97.  
D'Hauterive,  
vol. iv. p. 481.

are not to be comprehended fish and flesh, fresh or salted, wheat, flour, rye, or other grain, vegetables, oil, wine, and generally whatever serves to the nourishment and support of life, so likewise all these things may always be sold and transported as other merchandizes even to places possessed by an enemy of the two crowns, provided the same be not besieged or blocked up.

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FRANCE.

1786. September 26. *VERSAILLES.*

Chalmers, vol.  
i. pp. 517. 531.  
D'Hauterive,  
tom. ii. 86.

Article XXI.—This liberty of navigation and commerce shall extend to all kinds of merchandizes, excepting those only which are specified in the following article, and which are described under the name of contraband.

Article XXII.—Under this name of contraband, or prohibited goods, shall be comprehended arms, cannon, harquebusses, mortars, petards, bombs, grenades, saucisses, carcasses, carriages for cannon, musket rests, bandoleers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, helmets, cuirasses, halberds, javelins, holsters, belts, horses and harness, and all other like kinds of arms and warlike implements fit for the use of troops.

Article XXIII.—These merchandizes which follow shall not be reckoned among contraband goods, that is to say, all sorts of cloth and all other manufactures of wool, flax, silk, cotton, or any other materials, all kinds of wearing apparel, together with the articles of which they are usually made; gold, silver, coined or uncoined, tin, iron, lead, copper, brass, coals; as also wheat and barley or any other kind of corn and pulse, tobacco, and all kinds of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oil, wines, sugar, all sorts of salt, and of provisions which serve for sustenance and food to mankind; also all kinds of cotton, cordage, cables, sails, sailcloth, hemp, tallow, pitch, tar and resin, anchors and any parts of anchors, ship-masts, planks, timber of all kinds of trees, and all other things proper either for building or repairing ships. Nor shall any other goods whatever, which have not been worked into the form of any instrument or furniture for warlike use by land or by sea be reputed contraband, much less such as have been already wrought and made up for any other purpose. All which things shall be deemed goods not contraband, as likewise all others which are not comprehended and particularly described in

the preceding article, so that they may be freely carried by the subjects of both kingdoms, even to places belonging to an enemy, excepting only such places as are besieged, blocked up, or invested.

Article XXIV.— To the end that all manner of dissensions and quarrels may be avoided and prevented on both sides, it is agreed, that in case either of their Majesties should be engaged in war, the ships and vessels belonging to the subjects of the other shall be furnished with sea letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of abode of the master or commander of the said ship, that it may clearly appear thereby that the ship really and truly belongs to the subject of one of the princes; which passport shall be made out and granted according to the form annexed to the present treaty. They shall likewise be renewed every year, if the ship happen to return home within the space of a year. It is also agreed that such ships, when laden, are to be provided not only with passports as above mentioned, but also with certificates containing the several particulars of the cargo, the place from whence the ship sailed and whither she is bound, so that it may be known whether she carries any of the prohibited or contraband goods specified in the 22nd article of this treaty, which certificate shall be prepared by the officers of the place from where the ship set sail in the accustomed form. And if any one shall think fit to express in the said certificate the person to whom the goods belong, he may freely do so.

Article XXVI.— In case the ships belonging to the said subjects and inhabitants of the respective dominions of their Most Serene Majesties, either on the coast or on the high seas, shall meet with any men-of-war belonging to their Most Serene Majesties, or with privateers, the said men-of-war and privateers, for preventing any inconvenience, are to remain out of cannon-shot, and to send their boats to the merchant ship which may be met with, and shall enter her to the number of two or three men only, to whom the master or commander of such ship or vessel shall show his passport, containing the proofs of the property of the ship made out according to the form annexed to this present treaty, and the ship which shall have exhibited the same shall have liberty to continue her voyage; and it shall be wholly unlawful any way to molest or search her, or to chase or compel her to alter her course.

Article XXVII.— The merchant ships belonging to the subjects of either of the two high contracting parties which intend to go to a port at enmity with the other sovereign, concerning whose voyage and the sort of goods on board there may be just cause of suspicion, shall be obliged to exhibit, as well on the high seas as in the ports and havens, not only her passports, but also her certificates, expressing

that the goods are not of the kind which are contraband as specified in the 22nd article of this treaty.

Article XXVIII. — If, on exhibiting the above-mentioned certificate containing a list of the cargo, the other party should discover any goods of that kind which are declared contraband or prohibited by the 22nd article of this treaty, and which are designed for a port subject to his enemies, it shall be unlawful to break up or open the hatches, chests, casks, bales, or other vessels found on board such ship, or to remove even the smallest parcel of the goods, whether the said ship belongs to the subjects of the King of Great Britain or of the Most Christian King, unless the lading be brought on shore in the presence of the officers of the Court of Admiralty, and an inventory made by them of the said goods ; nor shall it be lawful to sell, exchange, or alienate the same in any manner, unless after due and lawful process shall have been had against such prohibited goods, and the Judges of the Admiralty respectively shall, by sentence pronounced, have confiscated the same ; saving always as well the ship itself as the goods found therein, which by this treaty are to be accounted free ; neither may they be detained on pretence of their being mixed with prohibited goods, much less shall they be confiscated as lawful prize. And if, when only part of the cargo shall consist of contraband goods, the master of the ship shall agree, consent, and offer to deliver them to the captor who has discovered them, in such case the captor, having received these goods as lawful prize, shall forthwith release the ship, and not hinder her by any means from prosecuting her voyage to the place of her destination.

*Form of the Passport and Sea Letters which are to be granted by the respective Admiralties of the Dominions of the two high contracting Parties to the Ships and Vessels sailing from thence pursuant to the 24th Article of the present Treaty.*

N. N. to all who shall see these presents, greeting : Be it known, that we have granted licence and permission to N. of the city (or place) of N., master or commander of the ship N., belonging to N. of the port of N., burthen tons, or thereabouts, now lying in the port or haven of N., to sail to N., laden with N., the

*Formulaire des Passeports et Lettres de Mer qui se doivent donner dans les Amirautés respectives des Etats des deux hautes Parties contractantes aux Vaisseaux et Bâtimens qui en sortiront, conformément à l'Article 24. du présent traité.*

N. N. à tous ceux qui verront ces présentes lettres, salut : Faisons sçavoir que nous avons donné congé et permission à N., de la ville (ou lieu) de N., maître ou conducteur du vaisseau N., du port de N., tonneaux ou environ, étant à présent au port et hâvre de N., de s'en aller à N., chargé de N., après que la visite

said ship having been examined before her departure in the usual manner by the officers of the place appointed for that purpose. And the said N., or such other person as shall happen to succeed him, shall produce this licence in every port or haven which he may enter with his ship to the officers of the place, and shall give a true account to them of what shall have passed or happened during his voyage, and he shall carry the colours, arms, and ensigns of N. during his voyage.

In witness whereof, we have signed these presents, and set the seal of our arms thereto, and caused the same to be countersigned by N. at

day of        in the year        .

de son vaisseau aura été fait avant son départ, selon la manière usitée par les officiers du lieu commis pour cela. Et le dit N., ou tel autre qui sera dans lieu d'occuper sa place, fera apparoir dans chaque port ou hâvre où il entrera avec le dit vaisseau aux officiers du lieu du présent congé, et leur fera fidèle rapport de ce qui sera fait et passé durant son voyage, et portera les pavillons, armes, et enseignes de N. durant son voyage.

En témoins de quoi nous avons fait apposer notre seign et le scel de nos armes à ces présentes, et icelles fait contresigner par N., à  
jour de        l'an        .

#### AMERICA.

1794. Nov. 19. LONDON.

Article XVIII. — In order to regulate what is in future to be deemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or by sea, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcasses, saucisses, carriages for cannon, musket-rests, handoliers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all the implements of war; as also timber for ship-building, tar or rosin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron, and fir planks only excepted, and all the above articles are hereby declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing in the precise cases in which alone provisions and other articles not generally contraband

Marten,  
Recueil, tom.  
v. p. 674.

may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise, it is further agreed that, whenever any such articles so becoming contraband according to the existing laws of nations shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified, and the captors, or in their default the government under whose authority they act, shall pay to the master or owners of such vessel the full value of all articles, with a reasonable mercantile freight thereon, together with the freight and also the demurrage incident to such detention.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place, but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she attempt to enter; but she shall be permitted to go to any other port or place she may think proper, nor shall any vessel or goods of either party that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors thereof.

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#### RUSSIA.

1797. February 10—21. ST. PETERSBURGH.

Marten, Recueil, tom. vi. pp. 357. 362.

Article XI. — All cannon, mortars, fire-arms, pistols, bombs, grenades, bullets, flints, matches, powder, saltpetre, sulphur, cuirasses, pikes, lances, sabres, cartouch-boxes, saddles and bridles, &c., beyond the quantity necessary for a ship, or the individuals on board, shall be regarded as ammunition of war, and if any such be found they shall be confiscated as contraband or prohibited articles. Nevertheless, neither the vessel, passengers, nor the rest of the goods which are found on board shall be detained, nor shall any opposition be made to the continuance of the voyage.

1801. June 5—17. LONDON.

Annual Register, 1801,

Article III. § 1. — That the ships of the neutral power shall navigate freely to the ports and upon the coasts of the nations at war.

§ 2. — That the effects embarked on board neutral ships shall be free, with the exception of contraband of war and of enemy's property, and it is agreed not to comprise in the number of the latter the merchandize of the produce, growth, or manufacture of the countries at war which should have been acquired by the subjects of the neutral power, and should be transported for their account, which merchandize cannot be excepted in any case from the freedom granted to the flag of the said power.

p. 212. Marten, tom. vii. p. 260. D'Hauterive, tom. vii. p. 229.

§ 3. — That, in order to avoid all equivocation and misunderstanding of what ought to be qualified as contraband of war, his Imperial Majesty of all the Russias and his Britannic Majesty declare, conformably to the 11th article of the treaty of commerce concluded between the two crowns on the 10th (21st) February, 1797, that they acknowledge as such only the following objects, viz. cannons, mortars, fire-arms, pistols, bombs, grenades, balls, bullets, fire-locks, flints, matches, powder, saltpetre, sulphur, helmets, pikes, swords, sword-belts, pouches, saddles and bridles, excepting, however, the quantity of the said articles which may be necessary for the defence of the ship and those who compose the crew; and all other articles whatever not enumerated here shall not be reputed warlike and naval ammunition, nor be subject to confiscation, and of course shall pass freely without being subject to the smallest difficulty unless they be considered as enemy's property in the above-settled sense. It is also agreed that that which is stipulated in the present article shall not be to the prejudice of the particular stipulation of one or the other crown with other powers, by which objects of similar kind should be reserved, prohibited, or permitted.

§ 5. — . . . In order the better to ensure the respect due to these stipulations dictated by the sincere desire of conciliating all interests, and to give a new proof of their loyalty and love of justice, the high contracting parties enter here into the most formal engagement to renew the severest prohibitions to their captains, whether of ships of war or merchantmen, to take, keep, or conceal on board their ships any of the objects which in the terms of the present convention may be reputed contraband, and respectively to take care of the execution of the orders which they shall have published in their admiralities, and wherever it shall be necessary.

Article IV. — The two high contracting parties, wishing to prevent all subject of dissention in future by limiting the right of search of merchant ships going under convoy to the sole causes in which the belligerent power may experience a real prejudice, by the abuse of the neutral flag, have agreed,—

§ 1.—That the right of searching merchant ships belonging to the subjects of one of the contracting powers, and navigating under convoy of a ship of war of the said power, shall only be exercised by ships of war of the belligerent party, and shall never extend to the fitters—



out of privateers or other vessels which do not belong to the imperial or royal fleet of their Majesties, but which their subjects shall have fitted out for war.

§ 2. — That the proprietors of all merchant ships belonging to the subjects of one of the contracting sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required, before they receive their sailing orders, to produce to the commander of the convoy their passports and certificates, or sea-letters, in the form annexed to the present treaty.

§ 3. — That, when such ship of war and every merchant ship under convoy shall be met with by a ship or ships of war of the other contracting party who shall then be in a state of war, in order to avoid all disorder, they shall keep out of cannon-shot, unless the situation of the sea or the place of meeting render a nearer approach necessary; and the commander of the ship of the belligerent power shall send a boat on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates that are to prove on one part that the ship of war is authorised to take under its escort such or such merchant ships of its nation laden with such a cargo and for such a port; on the other part, that the ship of war of the belligerent party belongs to the imperial or royal fleet of their Majesties.

§ 4. — This verification made, there shall be no pretence for any search if the papers are found in due form, and if there exists no good motives for suspicion. In the contrary case, the captain of the neutral ship of war (being duly required thereto by the captain of the ship of war or ships of war of the belligerent power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence on board each merchant ship, conjointly with one or more officers selected by the captain of the ship of the belligerent party.

§ 5. — If it happens that the captain of the ship or ships of war of the power at war, having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship in order to proceed to an ulterior search, he shall notify that intention to the captain of the convoy, who shall have the power to order an officer to remain on board the ship thus detained, and to assist at the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent power, and the ulterior search be carried on with all possible diligence.

Article V. — It is also agreed, that if any merchant ship thus convoyed should be detained without just and sufficient cause, the

commander of the ship or ships of war of the belligerent power shall not only be bound to make to the owners of the ship and of the cargo a full and perfect compensation for all the losses, expenses, damages, and costs occasioned by such a detention, but shall farther be liable to an ulterior punishment for every act of violence or other fault which he may have committed, according as the nature of the case may require. On the other hand, no ship of war with a convoy shall be permitted, under any pretext whatsoever, to resist by force the detention of a merchant ship or ships by the ship or ships of war of the belligerent power; an obligation which the commander of a ship of war with convoy is not bound to observe towards privateers and their fitters-out.

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SWEDEN.

1808. July 25. LONDON.

Article I.—In case that one of the contracting parties shall remain neutral in a war in which the other contracting party shall be engaged, the vessels of the neutral power shall not convey to the enemy or enemies of the belligerent power any coined money, arms, bombs with their fuses and appurtenances, carcasses, gunpowder, matches, bullets, lances, swords, pikes, halberds, saucisses, mortars, petards, musket-rests, bandoliers, saltpetre, muskets and their balls, helmets, cuirasses or coats of mail, or other kind of arms, troop-horses, or any thing necessary for the equipment of cavalry, pistols, belts, or other instrument of war, ships of war or guardships, nor any manufactured article of immediate use in their equipment, and that under pain of confiscation when these articles shall be seized by either of the contracting parties.

D'Hauterive,  
tom. vii. p.  
281.

Article II.—The cruisers of the belligerent powers shall be authorized to detain the vessels of the neutral power going to the port of the enemy with cargoes of provisions, and of pitch, resin, tar, hemp, and generally all unmanufactured articles used in fitting out merchant vessels (with the exception of herrings, iron in bars, steel, red copper, brass and brass wire, planks<sup>1</sup>, unless those of oak excepted); and if the cargoes thus exported by the vessels of the neutral power are the produce of the territory of that power and laden on account of its subjects, the belligerent power in this case shall be entitled to purchase the same on condition of paying a

<sup>1</sup> *Planches et madriers, hors ceux de chênes et esparres.*

profit of 10 per cent. on the price of the bill of lading faithfully declared, or on the market price, whether in Sweden or England, at the choice of the owner, and moreover an indemnity for the detention and all necessary expenses.

Article III.—If the cargoes specified in the preceding article (not being the property of an enemy), being *en route* with an avowed destination to a neutral port, be detained on suspicion of being actually destined for that of an enemy, and it is discovered after due inquiry that they were really destined for a neutral port, they shall be at liberty to prosecute their voyage after having obtained an indemnity on account of the detention and their necessary expenses, unless the government of the belligerent state, having a well founded fear that they might fall into the hands of the enemy, is desirous of purchasing the same; in which case they shall receive the full price that they would have obtained at the neutral port of their destination, with an indemnity for the same and all necessary expenses.

Article IV.—Herrings, iron in bars, steel, red copper, brass, brass wire, planks<sup>1</sup>, shall not be subject to confiscation or to the right of pre-emption on the part of the party belligerent, but they may be freely conveyed in neutral vessels, provided they are not the property of an enemy.

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#### PORTUGAL.

1810. February 19. RIO DE JANEIRO.

Hertiset, vol.  
ii. pp. 27. 59.

Article XXVIII.—Under the name of contraband or prohibited articles shall be comprehended not only arms, cannon, harquebusses, mortars, petards, bombs, grenades, saucisses, carcasses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, helmets, cuirasses, halberts, javelins, holsters, belts, horses and their harness, but generally all other articles that may have been specified as contraband in any former treaties concluded by Great Britain or by Portugal with other powers; but goods that have not been wrought into the form of warlike instruments, or which cannot become such, shall not be reputed contraband, much less such as have been already wrought and made up for other purposes; all which shall be deemed not contraband, and may be freely carried by the subjects of both sovereigns even to places belonging to an enemy, excepting only such places as are besieged, blockaded, or invested by sea or land.

<sup>1</sup> *Vide* note, p. 247.

## BRAZILS.

1827. August 17. RIO DE JANEIRO.

Article XV.—In order to regulate what is in future to be deemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war by land or by sea, such as cannon, muskets, pistols, mortars, petards, bombs, grenades, carcasses, carriages for cannon, musket-rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war, as also timber for shipbuilding, tar or resin, copper in sheets, sails, hemp and cordage, and generally whatsoever may serve directly to the equipment of vessels of war, unwrought iron and fir-planks excepted, and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.

Marten, Recueil, tom. vii. p. 486.

## APPENDIX B.

[THE following extracts are principally taken from a manuscript copied from the papers of Sir Nathaniel Lloyd, D.C.L., a distinguished advocate at Doctors' Commons, who was appointed advocate-general in 1710, and held that office sixteen years. The manuscript has in several places corrections in the handwriting of Sir George Lee, many of a very trivial nature, but which clearly prove how carefully it has been perused and examined by him.]

*Rules and Directions appointed by his Majesty in Council to be observed by the High Court of Admiralty in the Adjudication of Prizes.*

1. That where the ship or vessel brought in as prize shall belong to the states of the United Provinces, or any of their subjects, or any inhabiting with them, in such case no claim shall be admitted for the goods, but both ship and goods shall receive one and the same judgement, and both be judged and condemned as good and lawful prize; except sufficient letters of safe conduct from his Majesty or Royal Highness<sup>1</sup> be produced, or proved to be granted, for the said ship and goods.

Feb. 22. 1664.

Unfree ship,  
unfree goods.

<sup>1</sup> James, Duke of York, afterwards James II., was appointed by his brother Charles II., High Admiral of England.

Unfree person  
or goods, un-  
free ship.

No claim with-  
out authority  
from the ow-  
ners.

The master to  
claim for ow-  
ners and ma-  
riners without  
procuration.

The claim to  
be made by  
any one of the  
partners.

If not partners,  
by each par-  
ticular person.

Fighting,  
burning, or  
concealing  
ship's papers,  
no papers,  
false papers.  
Ship and goods  
to be con-  
demned.

Carrying con-  
traband goods  
to any port.

Condemnation  
upon presump-  
tion of fraud,  
without securi-  
ty in case of  
failure to  
prove prop-  
erty.

Upon appeal

2. That where the ship shall belong to any of his Majestyes friends, allies, or subjects, or any of them, and shall have persons or goods found aboard her belonging to any of the states of the United Provinces, their subjects or inhabitants, in such case the said ship and the said goods shall be alike condemned as good and lawful prize.

3. That, where ship and goods seized and brought in as prize shall be claimed to belong wholly to his Majestys friends, allies, or subjects, or any of them, there, though claim shall be allowed to be entered in the Court of Admiralty, yet no claim shall be allowed or suffered to proceed but where sufficient authority from the owners themselves is produced in Court or made sufficiently to appear, but the master shall be allowed to have sufficient power to claim the ship for his owners, and also whatsoever goods pretended to belong to his owners, without special procuration from them; also what goods are pretended to belong to himself and mariners; also so much of the lading as shall belong to the freighters in partnership, the claim may be made by any one of them, or any other having authority from them or any of them. But where the lading shall belong to several merchants not in partnership, the claim shall be made by each particular person for his respective part of the lading, or by some that hath authority from the respective persons, and not otherwise.

4. That where any ship met withall by any of the King's royal navy, or other ship commissioned by his authority, shall fight or make resistance, or the said master or any of the company shall throw, burn, tear, or conceal any of the ship's papers or documents, or shall have no papers at all found on board in the said ship, or shall bring and offer to the Court any false writings for evidence, thereby to clear her or her goods, or any of them, the said ship and goods shall be judged and condemned as good and lawful prize.

5. That if any ship or vessell shall be met withall carrying arma, powder, ammunition, or provisions of victuals, or any contraband goods, to any port of the state of the United Provinces, or into any of their territorys, lands, plantations, or countries, such ships or vessells, together with the said arms, powder, ammunition, provision of victual, and contraband goods, shall be seized and brought in, and shall be judged and condemned as good and lawful prize.

6. That where the Court shall have a strong presumption that the claim entered is fraudulent, the Court shall proceed to condemnation, unless he (the claimant) give sufficient security, in case he fail to prove his property, to pay such cost as the Court shall adjudge against him.

7. That if a claim, either of ship or goods, or both, shall be judged against, and the claimant shall make an appeal, such ship or goods so claimed shall be forthwith valued and sold, and the money proceeding of the same shall remain deposited till such appeal be

determined. But in that case also security shall be given before the Judges in the appeal by such appellant, to pay such costs as the Court shall adjudge against him, in case such appeal shall be adjudged against.

8. That upon notice given to the Court of Admiralty of the seizing and bringing into port of any prize, the Court shall send forth a process to be hanged up upon the Exchange or other most public place, whereby all that pretend to have any right or claim may come in and enter their claims in Court in such case where such claim is allowed. And if no person shall come in to claim within 14 days after the publication of the said process, then the Court shall forthwith proceed towards adjudication. And in case any shall come in to claim, if the goods shall be perishable, the Court shall forthwith order an appraisement and sale; and though they shall not appear to be perishable, yet, if the claimer shall have a commission into foreign parts, for the proof of his property, the Court shall also order an appraisement as aforesaid.

9. That the Court of Admiralty shall sit twice a week, or oftener, as occasion shall require, to give dispatch to the affair of prize ships and goods.

At the Court at Whitehall, the 22nd of February, 1664, the aforesaid rules and directions to be observed by the High Court of Admiralty in adjudication of prizes, being this day read at the board and approved, it was ordered by his Majesty in Council that the same be forthwith sent unto the Judges of his Majesties said High Court of Admiralty to be strictly observed and duly put in execution.

RICHARD BROWNE.

#### AT COURT OF WHITEHALL.

May 22. 1672.

##### *Present*

The King's Most Excellent Majesty.

His Highness Prince Rupert.	Earl of Arlington.
Lord Archbishop of Canterbury.	Earl of Shaftesbury.
Lord Keeper.	Viscount Falconberg.
Duke of Lauderdale.	Viscount Hallifax.
Earl of Bridgwater.	Lord Bishop of London.
Earl of Essex.	Lord Newport.
Earl of Anglesey.	Lord Clifford.
Earl of Bath.	Mr. Secretary Trevor.
Earl of Carlisle.	Mr. Chancellor of the Dutchy.
Earl of Craven.	Master of the Ordnance.

ship and goods to be valued, and money to be deposited to pay costs if the appeal be judged against.

Process.

Claim to be made within fourteen days.

Appraisement if either goods be perishable or commission be desired.

*Rules and Directions appointed by his Majesty in Council to be observed by the High Court of Admiralty in the Adjudication of Prizes.*

- Unfree ships, unfree goods. <sup>1</sup> 1. That where the ship or vessell brought in as prize shall belong to the states of the United Provinces, or any of their subjects, or any inhabiting with them, in such case no claim shall be admitted for the goods, but both ship and goods shall receive one and the same judgment, and both be judged and condemned as good and lawful prizes, except sufficient letters of safe-conduct from his Majesty or his Royal Highness be produced, or proved to be granted for the said ship or goods. *Ead.*<sup>1</sup>
- No claim without authority from the owners. 2. That where ship and goods seized and brought in as prize shall be claimed to belong wholly to his Majestys friends, allies, or subjects, or any of them, then the claims shall be allowed to be entered in the Court of Admiralty, yet no claim shall be allowed or suffered to proceed but when sufficient authority from the owners themselves is produced in Court, or made sufficiently to appear; but the master shall be allowed to have sufficient power to claim the ship for his owners, and also whatsoever goods pretended to belong to his owners, without any special procuration from them, and also what goods are pretended to belong to himself and mariners, and for so much of the lading as shall belong to the freighters in partnership the claim may be made by any of them, or any other having authority from them, or any of them. But where the lading shall belong to several merchants not in partnership, the claim shall be made by each particular person for his respective part of the lading, or by some that hath authority from the respective persons, and not otherwise. *Ead.*
- Master to claim for owners and mariners without prosecution. The claim to be made by any one of the partners. If not partners, by each particular person. 3. That where any ship met withall by any of the Kings royal navy, or other ships commissioned by his authority, shall fight or make resistance, or the master, or any of the company, shall throw away, burn, tear, or couceal any of the ship's papers or documents, or shall have no papers at all found on board in the said ship, or shall bring or offer to the Court any false or double writings for evidence, thereby to clear her or her goods, or any of them, the said ship and goods shall be judged and condemned as good and lawfull prize. *Ead.*
- Fighting, burning, or concealing ship's papers, no papers, false papers. Ship and goods to be condemned. 4. That if any ship or vessell shall be met withall carrying of arms, ammunition, powder, or provision of victuals, or any contraband goods, to any port of the states of the United Provinces, or into any of their territories, lands, plantations, or countries, such ship or vessel, together with the said arms, powder, ammunition,
- Carrying contraband goods to any port of enemy.

<sup>1</sup> *Ead.* at the end of an article shews it to be the same with the rules of 1664.

provision of victuals, and contraband goods, shall be seized and brought in, and shall be adjudged and condemned as good and lawful prize. *Ead.*

5. That no claim shall be admitted in the Admiralty Court till the claimer first give sufficient security to pay such costs and damages, in case he fails to prove his property, as the Court shall adjudge against him. *Nova.*

6. That if a claim either of a ship or goods, or both, shall be judged against, and the claimant shall make an appeal, such ship and goods shall be forthwith valued and sold, and the money proceeding of the same shall remain deposited till such appeal be determined. But in that case also security shall be given before the Judges in the appeal by such appellant to pay such costs as the Court shall adjudge against him, in case his appeal shall be judged against. *Ead.*

7. That upon notice given to the Court of Admiralty of the seizing and bringing into port of any prize, the Court shall send forth a process to be hanged up upon the Exchange, or other most publick place, whereby all that pretend to have any right to claim may come in and enter their claims in Court in such case where such claim is allowed; and if no person shall come in to claim within 14 days after publication of the said process, then the Court shall forthwith proceed to adjudication, and in case any shall come in to claim, if the goods shall be perishable, the Court shall forthwith order an appraisement and sale; and though they shall not appear to be perishable, yet if the claimers shall have a commission into foreign parts for the proof of their property, then the Court shall also order an appraisement and sale as aforesaid. *Ead.*

The Court of Admiralty shall sit twice a week, or oftner, as occasion shall require, to give dispatch to the affair of prize ships and goods. *Ead.*

It is this day ordered in council that the aforesaid rules and directions be observed by the High Court of Admiralty in the adjudication of prizes, and that the same be forthwith sent to the Judge of his Majestyes said High Court, to be strictly observed and duly put in execution.

EDWD. WALKER.

Pub. 3rd June, 1672.

#### POSITIONS.

1. It is not in the power of any prince alone to abrogate or disannull that paction or agreement which is made between him and another prince; but it is without dispute that the first agreement ought to stand untill a war or falling out happen between them. His Majestyes rules therefore, being of a later date, and his own

Claimer to give security for costs.

Upon appeal ship and goods to be valued. Money to be deposited.

To pay costs if appeal be adjudged against.

Process.

Claim to be made within fourteen days.

Appraisement if either goods be perishable, or commission be desired.



single act, to which other princes are not parties, cannot countermand or evacuate former treaties, which must necessarily be preferred before them. Neither do the rules themselves gainsay or control any treaties made with foreign princes, however the execution may sometimes seem to the contrary, upon very great suspicion that the true intent of the treaty is not duly observed by other princes.

2. The goods of an enemy in a friend's bottom may be lawfully seized; but enemy's goods, neither by the law of nations, nor by his Majesties present rules, will confiscate a friend's ships. (Vid. Grot. lib. 3. cap. 6. par. 5 et 6.)

De Eufrow  
Catherina,  
June 19. 1744.  
Claim for  
one-eighth part  
of ship ad-  
mitted.

Affirmed on  
appeal, and  
cause remitted  
April 14. 1746.  
but *quære*  
under what  
circumstances?

3. Navis hostilis non afficit res amicorum, quod juris est de toto, quoad totum; idem juris est de parte, quoad partem. A part either of ship or goods may be claimed by a friend as well as the whole.

4. The throwing away of paper is such an indication that they were material to the concerns of the ship and lading, that the proof of the contrary will be hardly admitted, for *cui bono* was the throwing them away, if it were not to save the ship or goods, and missive letters are many times great evidences of the condition both of ships and lading, especially letters to the master and factors, which frequently discover the whole design, quality, and property both of ships and ladings, from whence come and whither bound. (Vid. the 40th<sup>1</sup> Article of the Placcart of King Phillip of Spain, 1624., Cleirac, p. 445.)

5. The want of passports and certificates, if there be other writings in her, cannot prejudice the ship; neither are passports and certificates necessary; but some papers are necessary, and these may be dated as well before the war as since, so the war be not of long continuance; and though passports that be after the forms prescribed in treaties be necessary to avoid search and bringing up of ships, and so avoid great trouble and charge, yet the ships and lading may be preserved from confiscation without them, so they be furnished with other writings and proofs that may demonstrate them to belong to friends. But then they are not so free of being seized to undergo a stricter examination, as if they carried such formal pass as by treaties are agreed on.

6. It is not the having aboard false and double writings that is a ground of confiscation, but the offering false or double writings in evidence, to clear the ship, that ought to condemn her. Yet, if they be not reall, or insisted upon, or enforced, for evidence to clear her, they can do nothing to warrant confiscation. Nor do I think that the evidence in the preparatory, whether of master or mariners, or other ship evidence, contradicting the documents, do make them

<sup>1</sup> Art. XL. "Papers thrown overboard, or torn, or no papers found aboard, shall confiscate the

goods, until it appear that the said documents have been lost by mischance without their fault."

false, except there be a positive proof to affect them with falsehood ; that is, that they were forged and formed by a false hand, and not so as they pretend to be ; for confiscation is never made upon presumptive grounds of falsehood only, but the proof of falsehood must be evident and convincing, to induce a confiscation in this case, except mere presumptions concur to condemn also. Neither do I think the finding of double bills in the ship, the one to make a ship bound to a free port, the other to a port unfree, ought to confiscate the ship, for that artificial colour is lawfull in time of danger, and practised and allowed by all nations. But then, indeed, where double bills<sup>1</sup> are, they that have them must more clearly prove the ship and goods do belong to a friend, and not to an enemy, and were going to a friend's port, and not to an enemy's ; and that this is the truth, and the other was but a mere colour, for without an evident proof one enemy will be apt to suspect the worst that may be of another, and will in time of war condemn rather than restore.

7. By the law of nations, a ship carrying contraband goods forfeits itself only and the said goods contraband ; but not any other goods besides that are not contraband ; and so it is by the King's rule. (Vid. Reg. 4. 1672.) Setting aside what are by treaties agreed to be contraband, which must be so esteemed, whatsoever they be, and no other, I also agree that iron, pitch, tar, hemp, *clypebard*<sup>2</sup>, planks, corn, excepting wainscott, wine, oyle, salt, will be accounted contraband, under which all such things which are of a general use of furnishing the war, and those that are in arms are properly comprehended.

Nothing is forfeited but what is taken going to the enemy ; for, after the contraband goods are delivered, neither the ship nor the proceed of the contraband goods, upon the return, will be lyable upon that account singly to confiscation, much less will any other lading in the ship be confiscated.

8. No number of mariners, nor the master, being a Dutchman, will confiscate the ship, neither by the law of nations nor by any rule of the King now in force.

9. If the Dutch property be quite and absolutely bought, and the money paid, the ship is secure both the first voyage before she arrived at the free port, and for ever, so long as it remains out of an enemy's hands ; for the ground and cause of confiscation is taken away.

10. Embden was, in the last war with the Dutch, looked upon and adjudged as an enemy, and so accounted still ; and if any nation shall consent to entertain a Dutch garrison in any of their territories, that part at least where it bears command will be accounted an enemy, but not so if a garrison be brought in and fixed there by constraint and force.

<sup>1</sup> As to double false papers, *vide* Grot. lib. 3. cap. 1. *per totum*.

<sup>2</sup> Clapboard.

11. The using a Dutch flag is like other colourable things that are made use of to secure and preserve our best friends ; and, therefore, if there be nothing else, can be no ground of confiscation. (Vid. Grot. lib. 3. cap. 1. par. 8.)

12. When the enemy runs the risque, the very capture makes it to become and belong to enemy ; and therefore, in that case of insurance, what is insured by the enemy will be confiscate ; yet the premium given for insurance ought in equity to be repaid by the taker.

13. If the Dutch let to freight and enter goods for friends and allies not in any right of their own, they ought not to be judged as goods of the enemy, they being factors merely for other men that are friends ; but, indeed, coming from an enemy's country, and let and entered by Hollanders, it is lyable to suspition, and will run through a stricter examination ; but the truth being made to appear, the law will not confiscate in this case.

14. The ignorance of a war ought to safeguard a ship and goods from confiscation for want of necessary documents or carrying contraband goods or such like, till such time reasonable is past ; within which time probably a knowledge of the war may incur, and the measure of such time cannot nor is not made certain by the law, because distance of place is so various. It is therefore left to the discretion of the Judge, who must judge one way or other, as the circumstances of the case shall incline him ; but doubtless if intelligence thereof can have come by the post, he that shall act contrary will be judged to be in *MALA fide*.

*Sic. in orig.*

15. If, by the confession and deposition of the skipper and some of the mariners be *intended*, the examination in the preparatory, which are taken, when the ship is first brought up, by commissioners specially deputed to take them, in the absence of parties interested, and whereto they are no partys, nor minister any interrogatories, this proof will condemn, if it stand single, and no other comes to the contrary. But contrary proof will be admitted ; and if it be well fortified, it will and ought to prevail. (Vid. 6. Position.)

It is a suspicious thing in time of war for a ship to be taken going by the northern passage ; but it makes no presumption that it is unfree, much less will condemn, especially when any contrary evidence come to assert its freedom ; and though it be more suspicious a great deale to take a ship on the enemy's coast with contraband goods, and standing single may condemn her, yet because she may be forced thither by a storm, and that really she might be going to a friend's port, a contrary proof will be admitted ; and if it be clear it will free the ship from confiscation.

R. W., Ad. R.

May 23. 1672.

(Sr. ROBT. WIHEMAN, K.'s Advocate.<sup>1</sup>)

<sup>1</sup> *Vide Jonge Margaretha*, 1 Rob. 192.

## INSTRUCTIONS TO PRIVATEERS.

18th June, 1744.

Article IV. — That all captains and commanders of ships who have or shall have letters of marque or commissions for private men-of-war, are hereby required and enjoined to observe carefully and religiously the terms of the treaty-marine between his late Majesty King Charles II. and their High Mightinesses the States General of the United Netherlands, concluded at London the 1st day of December, 1674, old style, and confirmed by subsequent treaties; and they are hereby required to give security pursuant to the tenth article of the aforesaid treaty-marine for the due performance thereof.

Article V. — That all sorts of fire-works and things thereto belonging, as cannon, muskets, mortars, petards, bombs, grenades, saucisses, peckransen, carriages, rests, bandoleers, powder, match, saltpetre, bullets, pikes, swords, head-pieces, cuirasses, halberts, horses, saddles, holsters, belts, sailwork, rigging, cables, cordage, masts, lead, pitch, tar, hemp, together with all other equipage that serves for sea and land, laden in Danish or Swedish ships, or ships belonging to neutral countries, and bound to the enemies' country, are accounted contraband goods.

Article IX. — That the said commanders of such merchant ships or vessels who shall obtain the said letters of marque or commission as aforesaid for private men-of-war, shall not do or attempt any thing against the true meaning of any article or articles, treaty or treaties, depending between us and any of our allies, touching the freedom of commerce in the time of war, and the authority of the passports or certificates under a certain form in some one of the articles or treaties so depending between us and our allies as aforesaid, when produced and shewed by any of the subjects of our said allies, and shall not do or attempt anything against our loving subjects, or the subject of any prince or state in amity with us, nor against their ships, vessels, or goods; but only against France and Spain, their vassals and subjects, and others inhabiting within their countries, territories, or dominions, their ships, vessels, and goods, except as before excepted; and against such other ships, vessels, and goods as are or shall be liable to confiscation.

Article XVII. — That all persons who shall violate these instructions shall be severely punished, and also required to make full reparation to persons injured contrary to these instructions, for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

## REGULATIONS OF IMPERIAL CITY OF HAMBURGH.

18th September, 1778.

*Determination of Contraband.*

Article XVI. — The goods that, according to the law of nations, are considered unexceptionably contraband, are all things serving for direct ammunition of war ; viz., guns, muskets, mortar-pieces, bomb shells, puddings, pitched hoops, carriages for ordnance, rests for muskets, bandoleers, matches, powder, balls, pikes, swords, morions, helmets, cuirasses, halberds, darts, horses, saddles, and holsters, which and the like goods it is absolutely prohibited to deal in or traffick with, and no exception or excuse to be admitted or take place against it.

*Further Contrabands not consisting in direct Ammunition.*

Article XVII. — For determining and knowing the other contrabands not consisting in direct ammunition of war, any one is to inspect and observe the public declaration of the powers at war, or the instructions given with letters of marque, the contracts of commerce, and the laws of neutrality.

## INSTRUCTIONS FOR PRIVATEERS.

21st December, 1780.

Article XIII. — Whereas, notwithstanding our former instructions to the several commanders aforesaid, that nothing be in any wise attempted against the ships, vessels, and goods of any prince or state in amity with us or of their subjects ; yet it hath so happened, from ignorance of the several treaties subsisting between us and foreign powers, that several commanders of private ships of war have subjected themselves to very great costs and damages in our High Court of Admiralty for such irregular proceedings. We being desirous to adhere strictly to the faith of treaties, and as much as possible to prevent all illicit proceedings, do make known more particularly that the several treaties of January 29. 1641-2, and of July 10. 1654, subsisting between the British and Portuguese nations, are to be duly observed according to former precedents ; and especially the 23rd article of the last-mentioned treaty, whereby all goods and merchandises of the enemies of either of the contracting parties put on board the ships of either of them, or of their people or subjects, shall remain untouched : provided always that nothing shall appear by any persons on board the said ships, or by any letters, papers, or

other documents found on board the same, or by any other strong, circumstantial, and probable proofs, that the ship belongs in the whole or in part to any enemies of the crown of Great Britain, or is going to or coming from the British colonies in America, or is carrying the goods of our rebellious subjects, or is otherwise concerned in any illegal trade ; and we farther will, that all due respect be paid to the passports of her Portuguese Majesty, and to the certificates or cockets of the officers of her customs, whereby it shall appear that the party obtaining the same did make oath before the proper magistrate or officers, that the appearer was truly a subject resident generally himself and family, if he hath one, in the dominions of her Portuguese Majesty, and that no other person than himself or other Portuguese subjects have, at the time of obtaining such passport or certificate, or will have in view at the arrival of the ship at her destined port, any right, interest, or property in the said ship, and that the said certificates or cockets contain a fair, full, and true particular of the goods on board, and that such passports be granted for the voyage only out and home and for ships only lying at that time in some port of the Portuguese dominions, when or where the same shall be granted.

Article XIV. — That, in conformity to an explanatory article of the treaty of alliance and commerce between England and Denmark, concluded at Copenhagen, July 2. 1670, which hath been concluded and agreed upon between us and the King of Denmark, “ all sorts of  
 “ arms and things thereto belonging, as cannons, muskets, mortars,  
 “ petards, bombs, grenadoes, saucisses, carriages, rests, bandoleers,  
 “ powder, match, saltpetre, bullets, pikes, swords, headpieces, cui-  
 “ rasses, halberts, lances, javelins, horses, saddles, holsters, belts,  
 “ and generally all other implements of war ; as also ship-timber,  
 “ pitch, tar, rosin, copper in sheets, sail cloth, hemp, cordage, and  
 “ generally everything that is used in the equipment of ships (except  
 “ unwrought iron and fir planks), laden in Danish ships and bound  
 “ to the enemies’ country, are accounted contraband goods. But  
 “ fish and flesh, fresh or salted, wheat or other grain, flour, pulse,  
 “ oil, wine, and generally everything that serves for the nourish-  
 “ ment and sustenance of life, laden in Danish ships and bound to  
 “ the enemies’ country, are not accounted contraband, provided that  
 “ the places to which they are bound are not besieged or blocked  
 “ up.”

Article XV. — Whereas, notwithstanding our former instructions to the several commanders aforesaid, some inconvenience has arisen from an ignorance of the nature and extent of our engagements with our good sister the Empress of all the Russias, we being determined to adhere strictly to the faith of those engagements, and solicitous to prevent as much as possible all illicit proceedings, do hereby enjoin to all the several commanders aforesaid the strictest

observance of the stipulations of the Xth and XIth Articles of the treaty of commerce concluded between us and her Imperial Majesty on the 20th June, 1766; which articles are here inserted that they may be accurately known to all the aforesaid commanders and observed by them as an inviolable law.

Article X.—“The subjects of the two high contracting parties shall be at liberty to go, come, and trade freely with the states with which one or other of the parties shall at this or at any future period be engaged in war, provided they do not carry warlike stores to the enemy; this liberty, however, not to extend to places actually blocked up or besieged either by sea or land. At all other times, and with the single exception of warlike stores, the aforesaid subjects may transport to these places all sort of merchandize as well as passengers without the least impediment. In the searching of merchant ships, men-of-war and privateers shall behave as favourably as a state of actual war can possibly permit towards the most friendly neutral powers, observing as far as may be the principles and maxims of the laws of nations that are generally acknowledged.”

Article XI.—“All cannon, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, fuses, flint-stones, matches, powder, saltpetre, sulphur, breastplates, pikes, swords, belts, cartouche bags, saddles and bridles, beyond the quantity that may be necessary for the use of the ship, or beyond what every man serving on board the ship and every passenger ought to have, shall be accounted ammunition or warlike stores, and if found shall be confiscated according to law as contraband goods or prohibited effects, but neither the ship nor passengers nor the other merchandizes found at the same time shall be detained or hindered from prosecuting their voyage.”

Article XIX.—That all persons who shall violate these or any other of our instructions, shall be severely punished, and also required to make full reparation to persons injured contrary to our instructions for all damages they shall sustain by any capture, embazement, demurrage, or otherwise.

#### AT THE COURT AT WHITEHALL.

Feb. 4, 1664.

*By the Right Honourable his Majestyes Principal Commissioners for Prizes.*

Whereas we are informed that upon tryall and adjudication in the Court of Admiralty of several ships taken as prizes you proceed to the condemnation of the bottoms as Dutch, and respite your sentence

as to the goods, with offer of time and liberty unto all claimants who are likely to withdraw by their pretended proofs great quantities of the cargoes of ships condemned, we therefore, in pursuance of his Majestyes command, and to prevent that the seizure of all enemy ships may not by such liberty of claiming the goods become wholly ineffectuall; and his Majesty having further declared himself that he will speedily send you rules<sup>1</sup> for your better direction therein, do hereby pray and require you to respite all proceedings of that nature until you receive further orders.

ALBEMARLE.	HENRY BENNET.
ST. ALBANS.	WILL. MORRIS.
LAUDERVILL.	ROB. SOUTHWELL.
JOHN BERKLEY.	

## AT THE COURT AT WHITEHALL.

Feb. 22. 1664.

*By his Majestyes Principal Commissioners.*

Ordered that Embden and Ameland be reputed as members and branches of Holland, the ships and goods belonging thereunto to be condemned as enemies.

BUCKINGHAM.	ASHLEY.
ORMOND.	HEN. BENNET.
ANGLISEY.	

## AT THE COURT OF WHITEHALL.

Feb. 28. 1664.

*By the Right Honourable his Majestyes Principal Commissioners for Prizes.*

Whereas we formerly directed an order to you the Judge of the High Court of Admiralty to stop proceedings in your court in certain cases for a time, and believing now that the rules and directions lately agreed on by his Majesty in councill are sent unto you, we do hereby pray and require you not to make any further stop, but to proceed on upon the hearing and adjudication of claims according to the said rules and justice.

## WHITEHALL.

May 18. 1665.

*By his Majestyes Principal Commissioners of Prizes.*

Canvas, masts, pitch, tar, and all other navall accommodations, as also wine, oyl, brandy, fish, corn, salt, flesh, and all other things that tend as provisions unto the support of life, as well as powder,

<sup>1</sup> *Vide Rules and Directions, p. 249.*



guns, or other instruments of war, declared contraband goods, and so intended by his Majesties declaration of the 22nd Feb. 1664. (Vide supra p. 249.) (Vide the Positions, Article 7. p. 255.)

[To this order is annexed the following observation in Sir George Lee's handwriting.]

N.B. — *This order*<sup>1</sup> *is not to be found in the registry of the Admiralty Court or in the Council Office.*

#### JUST CAUSE OF SEIZURE.

In the treaty betwixt England and Swedeland, made since the Dutch war.

(*Tractatus*, A.D. 1661., vide Art. 12.)<sup>2</sup>. — Officers empowered shall make strict inquiry into ships and merchandizes; the masters of ships and proprietors of goods shall make oath before them that there are no enemy's goods concealed or contraband goods; then the owners' names, the quantities and qualities shall be specified in sea-brief or passport, in form prescribed in the treaty. If a king's man-of-war or privateer shall seize or carry out of her course any merchant ship thus provided, unless it be upon just cause of suspicion, such as is known beforehand, and such as may be proved by most evident reasons, the taker shall be severely punished, and all possible care shall be taken that the party aggrieved be reimbursed of his damages.

Orig. "refused:" altered in Sir G. Lee's handwriting to "ought to refuse."

Where these requisites are observed the judge of the Admiralty *ought* to refuse to pronounce for just cause of seizure, which implies that the Swedes be condemned to pay, not only costs of Court, but also incident charges in the ports, which amount to £60, though the ship be but in ballast.

#### *Reasons.*

From the nature of treaties in general, for besides that they are so much the more inviolable as the non-observances of them is of pernicious consequence, they are the law and the rule in judgment, and (as every private man's part and covenant makes most strongly against himself) must be taken against the King in these cases; nor is there any liberty left, in interpreting them, to recede from the literal, genuine sense; for, if so, the great end of treaties (which is to determine things ambiguous and to explain things obscure, by putting forth the one and the other out of all question) would be quite eluded; and besides that matters of favours (as this free passage is declared to be) are not to be restrained, but to be allowed the same amplifications and extensions as the grants of princes relating to their own subjects are in most favourable cases.

<sup>1</sup> Referred to in the case of the "Med. Gudi Hielpen." Vide ante, p. 202

<sup>2</sup> Vide p. 213.

2. From the professed design and scope of this present treaty it was calculated for a time of war; it was made up since our war began with the Dutch; the preface requires it to be observed *ad amussim et quam exactissime*, and nothing to be done *sub quacunque specie vel pretextu* against the tenor of it; so that it seems now too late to say that if the Swedes may not be sifted and their passports brought to a test, the whole trade of the enemy will be carried on under their colours. This should have been, and doubtless was, debated at the making up of the treaty, but cannot be urged in a judicature where all parties to the treaty are to have equal benefit and the same measures of justice; yet we have the least reason, in common appearance, to presume of so much of falseness in those magistrates and of perjury in that people, since of the many ships with passports in form there has not yet one pennyworth of enemy's goods been apprehended aboard them.

Grotius de  
Jure Belli.  
lib. 2. cap. 16.  
§ 12.

3. From his Majesty's orders given in this case, and his royal determination in another not unlike it<sup>1</sup>, not to mention how rigid observers our princes have always been, not only of the leagues made with their friends, but also of the truces and letters of safe conduct granted to their enemies, insomuch that the breakers of leagues, truces, and letters of safe conduct are, by several Acts of Parliament<sup>2</sup>, declared traitors, and as such to be proceeded against and punished. His Majesty has, upon several occasions, in council declared his utter dislike of disturbing the Swedes in their trade; has commanded several of their ships to be forthwith discharged without paying any charges at all, though himself must bear the incident charges of waiters, examiners, and others employed in the ports below; has given orders that Swedes' ships should not be molested or diverted in their course; and his Royal Highness has, by his Majesty's directions, written most expressly to his admirals and commanders to the same effect.

That the Swedes will bring in a long score of damages for detention of their ships, which, if not struck off by some good expedient, the King will be obliged to make up. Objection.

The treaty says, indeed, the public must make reparation where privateers do this mischief, if there be not 1200*l*. security entered into to answer the Swedes in case they suffer damage by any private commission. In other cases the treaty says no more but that all care shall be taken that the party aggrieved have redress according to the equity of his case; and there will be little ground to expect that his Majesty shall answer their damages, considering the many express orders given by himself, as also by his Royal Highness, to prevent Answer.

<sup>1</sup> A Spanish prize taken by a Portuguese.

<sup>2</sup> 4 H. 5. c. 7., 14 Ed. 4. c. 4.

and remedy those abuses. However, a sentence in the Admiralty to justify what our men of war have done at sea can signify nothing, unless it have its warrant in law, and support in reason against the objections of the contrary party.

**Objection.** That upon a demand of such damages as these are, which the Swedes made in Cromwel's time, much was struck off when it appeared that just cause of seizure had been pronounced in the Admiralty, and the sentence not appealed from.

**Answer.** Sweden had no such treaty as this to urge in those times. 2ndly. It doth not appear but that the causes of seizure were more justifiable *de jure communi* than those in question. 3rdly. When there happens a cause of seizure that is reconcileable with this present treaty which is duly made proof of, it is pronounced without difficulty, and so it is when any Swedish ships are brought up, going to or from an enemy's port without sea-brief in form prescribed; but to pronounce just cause of seizure against the express letter of the treaty would make the sentence so grossly and absurdly void and null in law, that it would not in the least preclude the Swedes from their demands, though they should neglect the ordinary remedies of appealing; for in this case, where there is nothing in the Acts of Court to justify the sentence, and where the tenor of the treaty overthrows it (for their *querela nullitatis* would be at any time within thirty years), not to mention that, strictly speaking, there is no time prefixed to extinguish men's rights by the law of nations.

**Objection.** Souldiers and illiterate seamen are not competent judges of sea-briefs that are in the Latin or Swedish tongues, not being able to discern whether they be in due form or else counterfeit, therefore the ships must be brought in.

**Answer.** The treaty, which is the law in this case, has made them sole judges, and that in favour of the English as well as Swedish free trade. The Spaniard and the Hollander observe this article without bringing the passport of each other to a judicial test in their Admiraltys; nor do those of Algiers dispute the Duke of York's passports because they are in the English tongue, or may be used in a colour, as sometimes they are, to the goods of their enemies.

#### INSTRUCTIONS TO PRIVATEERS.

May 2. 1693.

3. Ships belonging to any prince or state in war with France, or belonging to Altena, Gluckstadt, Hamburgh, Lubeck, Dantzick, and other cities and places of the empire, as well on the East Sea as on the rivers of the Elbe, Wcser, and Eema, although belonging to the

King of Sweden, Denmark, or other princes or states, as members of the empire, and subject to the avocatories of the empire, which shall be bound to, or coming from, France, or any of the dominions of the French king, may be taken as prize.

4. All ships of any other nation that are bound to France, or the dominions of the French King, from any place in war with France, or subject to avocatories of the empire, or shall come from France bound to any such place, shall be taken as prize, unless only in ballast.

5. All ships carrying contraband to France may be seized also.

6. (*Concord. New Instructions, 18th June, 1744*<sup>1</sup>, concludes) Equipage that serves for sea or land, laden in Danish ship, and bound to enemies' country, are accounted contraband.

7. All goods specified in the 6th article laden in neutral ships, to be reputed contraband, and corn.— N. B. *Corn struck out of these by Warrant from the Queen.*

9. Danish ships being furnished with passports, together with authentic certificates relating to the oaths required by the Convention with Denmark, the form of which pass and oaths are hereunto annexed, may pass freely, except such ships as have not disposed of their whole lading in the first port of France where they touched, but together with remainder of their lading have taken in other goods in that first port of France, and are proceeding towards another place within the territory of the French King with the same, and also except in the cases before mentioned.

10. Ships belonging to subjects of Sweden being provided with passports and certificates, according to 12th Article of Treaty<sup>2</sup> between England and Sweden hereunto annexed, shall not be molested otherwise than as in the said article is mentioned, or in the cases before expressed, and that Swedish ships that shall appear to have set sail out of any Swedish port before the 1st of May, 1693, shall not be detained in case master or supercargo shall take like oath as required by the form of a Swedish pass comprehended in said 12th Article.<sup>3</sup>

14. *Concord. 9th Instruction of 18th June, 1744.*<sup>1</sup>

THE FORM OF THE OATHS, AS ALSO OF THE PASSPORT OR PASS  
REQUIRED BY THE CONVENTION WITH DENMARK.

*Form of Oath to be taken by Owner of Ship, &c., lading, if there  
be but one.*

1. The Danish owner to swear as to burden and property of ship.

<sup>1</sup> *Vide p. 257.*

<sup>2</sup> *Vide p. 214.*

2. That he intends the ship lying at Copenhagen, &c., shall go from thence under conduct of N., burgher of Copenhagen, as master, to Norway; and from thence to Bordeaux (or other places), in France, and from Bordeaux (or other places) directly return to Copenhagen, or other port of Denmark, situated out of the Roman empire; and, after departure from Denmark, till return thither again, he shall not touch at any other place but France, unless compelled by stress of weather.

3. That hath not, or will, during voyage, make any collusive agreement with any foreigner or inhabitant of any places subject to Roman empire, for assigning or transferring the property of ship or goods therein laden to any person; nor will he make any such agreement with any subject of Denmark, unless such subject shall oblige himself by like oath to observe the articles of oath as far as the same concerns the thing which shall be transferred.

4. That ship is not now laden, nor shall, until voyage ended, be laden with my knowledge, &c., in whole, or in part, with contraband goods, prohibited by edict of King of Denmark, dated 1697<sup>1</sup>, or any other but such as do really belong to me alone, and to no other, without fraud and collusion; which goods, and no other, the ship shall carry into France, and bring from thence.

5. Ship shall not carry any goods to France taken in at any places subject to the Empire, or parties now at war; nor shall unlade any goods once laden in France in any other port of France, or in the places subject to the Empire, or to the parties now in war in her return, if by chance she should be compelled by stress of weather to put into such places.

6. That hath not nor will give any authority to master to do any thing contrary to articles.

#### *The Oath of Master.*

That nothing contrary to any of the aforesaid articles hath been done that he knows of, and that nothing hereafter shall be done with his knowledge or consent.

#### *Oath of Owners, if more than one.*

We, the real subjects of Denmark, declare and promise all matters following:—

That the ship called \_\_\_\_\_, belongs to \_\_\_\_\_,  
tons burthen \_\_\_\_\_ lasts, \_\_\_\_\_ in manner  
following; viz., to A. B.  $\frac{1}{2}$ ; to E. F.  $\frac{2}{3}$ .

2. 3. That it is really agreed amongst us that the ships lying at

<sup>1</sup> *Vide post*, p. 267., and Rob. Coll. Mant. 176.

[*as above*], and that none of us hath or will make any collusive agreements concerning the assigning our share, hereafter named, of ship and lading during voyage.

4. That ship is not nor shall, till voyage ended, be laden with consent of any of us with any goods but such as belong to us alone, without &c. [*as before*], viz., to A. 50 last, to B. and C. , and the said goods only and no others, &c. *The rest in same form as that taken by master.*

*Certificate.*

Certifies that our subject N. N., sworn burgher of &c., hath represented to us that the ship called N., burthen , lying at Copenhagen [*or elsewhere*], doth belong to him alone, loaded with goods belonging to him alone, not prohibited by our edict of 1697, and put on board at Copenhagen, or elsewhere, in our kingdom, as also in the Baltic Seas, or other places not engaged in the war,

[*Here the places are to be specified*]

and not laden or to be laden with any other goods, is going directly from the said places to Bourdeaux (or to some other place in France), and from thence, laden with the goods likewise, to him alone belonging, and no other, directly to return to Copenhagen (or to any other places of our dominions out of Roman Empire), and that the voyage shall be performed under conduct of N. N., inhabitant and sworn burgher of Copenhagen, as master. All which premises our subject having on oath affirmed, before magistrates of Copenhagen in our Chancery, according to the form prescribed, we have thought fit to grant our letters of safe conduct, &c.

*Form of Pass where more Owners than One.*

That subjects, &c., A., B., C., D., and certain other burghers, &c., have represented to us, and affirmed on oath before magistrates in Chancery, that ship, &c., does belong to them alone, and is now laden with goods, which also *bonâ fide* belong to them alone, &c., and thence with goods belonging likewise to them alone, &c., which being, &c.

*A Copy of 11 and 12 Articles of the Treaty with Sweden, 1661<sup>1</sup>, with the Form of the Pass, is annexed.*

INSTRUCTIONS TO PRIVATEERS.

29th January, 1704-5.

2. In conjunction with the States-General, being willing to en-

<sup>1</sup> *Vide*, p. 218.

courage our and their subjects in their intercourse with the Spanish nation in the West Indies, as shall be inclined to acknowledge the Title of Car. III., with whom we are in friendship, direct no violence to be done by privateers on main land of continent or islands, or plantations of Spaniards in America, or against any of our subjects, and of the States. That ships or goods that shall be coming to or going from any port in the Spanish West Indies, being for account and risk of our subjects, or of the States, provided no goods belonging to inhabitants in France, or contraband, be permitted to be carried to any Spanish plantation, which are hereby declared to be liable to confiscation and seizure.

This instruction to be understood, that privateers may take any Spanish ship on the main sea or in fresh water, or in any harbour, &c., in America, and to bring away such ship and goods on board.

3. *Concord.* 3. *Instruction*, 1693<sup>1</sup>, with an addition as to places on the River Oder.

4, 5, 6, and 7. *Concord.* 4 and 5. *Instructions*, 1693.

8. *Concord*, 1693<sup>2</sup>, with this difference, to pass free, having the pass and certificate, and there be no suspicion of their having naval stores on board.

9. Ships belonging to Sweden shall be visited and brought up in case not furnished with passports and certificates, word for word, according to the form prescribed by 12th article of treaty between England and Sweden, 1661, hereunto annexed, or in case there be just cause of suspicion.

10. All ships of Denmark or Sweden, or of neuter towns, trading to or from France, and being let out to freight, shall be furnished with charter parties.

11. If any Danish ship be met with at sea or on the coasts by privateers, privateer shall send his boat on board such Danish ship with only two or three of his company, to whom the Danish master shall show his passport, certificate, and papers on board.

*Note.* — *We were at War with Spain as well as France, and these Instructions extend to Subjects of Spain as well as France.*

*Instructions, 11th May, 1706.*

2. All vessels bound to or coming from any port of France or Spain, which shall be furnished with proper passes from us, or States-General, shall not be brought up or molested, if pursuing voyage described in the pass, and so as do not carry contraband.

3. *Concord.* 2. *Instructions*, 1704.<sup>3</sup>

<sup>1</sup> *Vide* p. 264.

<sup>2</sup> *Vide* p. 267.

<sup>3</sup> *Note*, Art. 9.

4. All ships carrying contraband to France and Spain shall be seized as a prize.

5. No goods laden in Dutch ships shall be deemed contraband other than such so declared to be by Marine Treaty, 1674.<sup>1</sup>

6. *Concord.* 5<sup>2</sup>. *Instructions*, 18th June, 1744.

7. *Concord.* 8<sup>3</sup>. *Instructions*, 1704.

8. *Concord.* 9<sup>3</sup>. *Instructions*, 1704.

*N.B.* To all the Instructions, the Form of the Oaths, and also of the Pass, required by the Convention with Denmark. And the 11th and 12th Articles of Treaty with Sweden, in 1661, with the form of pass are annexed.

<sup>1</sup> *Vide*, p. 226.

<sup>2</sup> *Vide*, p. 257.

<sup>3</sup> *Vide*, p. 268.

## APPENDIX C.

### FORMS OF PROCEEDING.

#### 1. *Affidavit on bringing in a Ship's Papers.*

In the High Court of Admiralty of England.

The ship \_\_\_\_\_, Master \_\_\_\_\_.

Appeared personally A. B. \_\_\_\_\_ of her Majesty's ship of war the \_\_\_\_\_, and made oath and said, that the paper writings hereunto annexed, marked from No. 1. to No. \_\_\_\_\_ inclusive, are all the books, papers, passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, which were delivered up or otherwise found on board the ship called the \_\_\_\_\_, whereof \_\_\_\_\_ was master or commander, and lately taken by her Majesty's said ship of war the \_\_\_\_\_, at which capture this deponent was present. And he further made oath that the said papers and writings are brought and delivered in as they were received and taken, without any fraud, addition, subduction, alteration, or embezzlement, and in the very same plight and con-



dition (save the numbering thereof) as when the same were delivered up or found on board the said ship.

Sworn at                      in the county of                      } A. B.  
the                      day of                      185 .

Before me,

C. D.,  
Commissioner,

In the presence of

E. F.,

Notary Public and Actuary assumed.

*2. Affidavit as to Papers when Seizure in English Port.*

In the High Court of Admiralty of England.

The ship "*Rapid*."                      *Hansen*, master.

Appeared personally C. A. D., Tide Surveyor of her Majesty's Customs at the port of *Kingston-upon-Hull*, and made oath and said that the paper writings hereunto annexed, marked from No. 1. to No. 17. inclusive, are all the books, papers, passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, which were delivered up or otherwise found on board the ship called the "*Rapid*," whereof *Jung Roid Hansen* was master or commander, and which said ship is now detained at the port of *Kingston-upon-Hull* aforesaid, by her Majesty's Officers of Customs at the said port, by order of this Honourable Court. And he further made oath that, at the time of the delivery up to him of the said papers and writings, the said *Jung Roid Hansen* stated that such papers and writings were all the papers and writings relating to the said ship on board. And he further made oath that, after the said papers and writings had been so delivered up or otherwise found on board the said ship as aforesaid, he caused a strict search to be made on board the said ship, and discovered the paper writings and documents hereunto also annexed, and marked from No. 18. to No. 127. inclusive, in a secretary and some clothes-drawers in the cabin of the said ship. And he further made oath that the said papers and writings are brought and delivered in as they were received and taken, without any fraud, addition, subduction, alteration, or embezzlement, and in the very same plight and condition (save the

numbering thereof) as when the same were delivered up or found on board the said ship.

Sworn at the borough of *Kingston-upon-Hull* }  
aforesaid, the Twenty-eighth day of } C. A. D.  
August, One thousand eight hundred and }  
fifty-four. }

Before me,

G. S.,

Commissioner,

In the presence of

H. J.,

Notary Public and Actuary assumed.

3. *Affidavit as to Papers.—Seizure in English Port.—None on board.*

In the High Court of Admiralty of England.

The ship “*Neptune*.” Thomas Keetly, master.

Appeared personally C. A. D., Tide Surveyor of her Majesty's Customs at the port of *Kingston-upon-Hull*, and made oath and said that on the Eighth day of August last he, together with E. C., River Inspector of her Majesty's Customs at the said port, did, in pursuance of an order received from the Lords Commissioners of her Majesty's Admiralty, seize and take the barque “*Neptune*,” whereof Thomas Keetley now is or lately was master or commander, and which said barque is now held under detention by them at the port of Great Grimsby. And this deponent further saith that, at the time the said barque was so seized as aforesaid, she was in a dismantled condition, and with no person on board of her, nor were there at the time of such seizure, or subsequently, any books, papers, passes, sea briefs, charter-parties, bills of lading, cockets, letters, or other documents or writings whatsoever, relating to the said barque, found on board thereof by the said deponent, or by the said Edward Catchpole, or by any other person or persons, to the best of the knowledge and belief of this deponent.

Sworn at the borough of *Kingston-upon-Hull*, }  
the Third day of September, One thou- } C. A. D.  
sand eight hundred and fifty-five. }

Before me,

G. S.,

Commissioner.

In the presence of

C. F.,

Notary Public and Actuary assumed.

*4. Affidavit as to Papers. — Seizure in Port. — Papers, &c., relating to Vessel.*

Admiralty Prize.

The "Neptune."

Appeared personally E. C., River Inspector of Her Majesty's Customs at the port of Hull, and C. A. D., Tide Surveyor of Her Majesty's Customs at the said port, and made oath that on Wednesday, the 8th instant, the deponents did, in pursuance of directions from the Proctor for the Admiralty, seize and detain at the port of Great Grimsby the above-named barque "Neptune," whereof Jacob Sjöberg was lately, and afterwards T. K., as they have been informed and believe, became master or commander. That at the time of such seizure the said barque was in the Old Dock at Grimsby aforesaid dismantled, and there was no person on board, and the hatches and cabins were locked. That in about three hours afterwards they met with and applied to Mr. R. K. of Great Grimsby aforesaid, ship and boat builder, who is mayor of the said town, and claims to be the present owner of the said barque, and informed him of their having seized her, and that they were acting under the directions of the Proctor for the Admiralty, and of the Marshal of the Admiralty Court, and produced to him their letters addressed to the Collector of Customs for the port of Hull, and requested him to give up to them all papers and documents belonging to the said ship, which he refused to do. That the deponents then requested him to give up the keys of the said vessel to enable them to search her, which he also refused to do; but afterwards sent a man on board with such keys, when deponents, who had returned to the barque, desired such person to give up such keys, but he refused to do so, and the same were only obtained by force, when deponents proceeded to search, and did search the said barque, but were unable to find any paper or document whatever, and the deponents having placed a man in possession, and locked up the hatches, left her. That afterwards, on the same day, having returned to the barque, the deponents found one of the said Mr. K.'s labourers on board, and several others on shore near her; that the man on board said he had been directed by Mr. K. to obtain the keys, or break open the hatches, and, if the person placed in possession offered obstruction, to knock him down; and the conduct and threats of the said person, and of those on shore, were such that these deponents thought it necessary to place two commissioned officers of customs on board to keep possession, in addition to the man already placed by them on board. And the said E. C. and C. A. D. further made oath that they knew that the

said barque arrived at Hull in or about the twenty-ninth May, one thousand eight hundred and fifty-four, under Russian colours, and with Russian papers, from Kertch, in the Black Sea, with a cargo consigned to merchants of Hull, having left the said port on twenty-sixth March, one thousand eight hundred and fifty-four; and that she was reported at the Custom House at Hull as being a Russian ship belonging to the port of Wasa in Finland. That her cargo was discharged on or about twenty-ninth June following, and on or about the thirtieth of the said month she was taken to Great Grimsby aforesaid, where she has ever since remained. That these deponents have made diligent inquiries after the aforesaid J. Sjoberg, under whose command the said barque "Neptune" arrived in Hull, and also after her crew, but have not been able to find the said master, or any of the said crew; and they have been informed, and believe, that they have left this country, and that T. K., father of the said R. K., now is, or lately was, master of the said barque. And the deponents further made oath that the paper-writings hereto annexed, marked from No. 1. to No. 12. inclusive, are true and faithful copies of several original papers or documents relating to the said ship "Neptune," which are now remaining in the possession or custody, or entered in the official books of the Collector and Comptroller of Her Majesty's Customs for the port of Hull; that the paper marked No. 13., also hereto annexed, is a list of seven papers, also relating to the said ship, and signed as such by the Collector and Comptroller of Her Majesty's Customs for the port of Great Grimsby; and that the papers respectively marked No. 1. and 14., No. 2. and 15., No. 3. and 16., No. 4. and 17., No. 5. and 18., No. 6. and 19., No. 7. and 20., are severally and respectively true and faithful copies, and certified as such by the Collector and Comptroller of Her Majesty's Customs for the port of Great Grimsby, of papers belonging to the said ship "Neptune," remaining in the custody or possession, or extracted from the books of the said Collector and Comptroller. And the deponents further made oath that there has been produced to them by Messrs. J. L. & Co., formerly of Hull, but now of Great Grimsby, who were agents for the said ship, a letter book, containing copies of letters written by them to several persons, and copies of letters addressed to them by different persons relative to the sale of the said ship "Neptune," dated in or about the months of May, June, July, and August, 1854; and there have also been produced to them by the said Messrs. L. several original letters relating to the said ship, bearing date in or about the said months, of which said letters several appear to have been written by the said Messrs. L., four by the said R. K., and two by Mr. F. B. of London, addressed to the said Messrs. L.;

and these deponents say they believe that the said letter book and original letters will be important papers to produce in this case.

On the 31st day of August, 1855, the said E. C. }  
was duly sworn to the truth of this affi- } E. C.  
davit,

Before me,

J. P. D.

On the 3rd day of September, 1855, the said C. A. D. }  
was duly sworn to the truth of this affidavit at } C. A. D.  
the borough of Kingston-upon-Hull,

Before me,

G. R.

A Commissioner to administer oaths in Admiralty.

*5. Mention, on Part of Captor, to proceed to Adjudication.*

VICTORIA. by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to Evans Jones, Esquire, Marshal of the High Court of our Admiralty of England, and to his deputy whomsoever, greeting. Whereas the worshipful John George Middleton, Doctor of Laws, Surrogate of our beloved the Right Honourable Stephen Lushington, Doctor of Laws, our Lieutenant of the said Court, and in the same Court Official, Principal, and Commissary General and Special, and President and Judge thereof, and also to hear and determine all and all manner of causes and complaints as to ships, vessels, and goods seized and taken as prize, specially constituted and appointed, rightly and duly proceeding at the petition of our Procurator-General, hath decreed all persons in general who have, or pretend to have, any right, title, or interest in the ship or vessel called the "Achilles" (whereof — Drizzi was master), her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, seized and taken by our ship of war "Firebrand" (Hyde Parker, Esquire, commander), and taken to Constantinople to be monished, cited, and called to judgment, at the time and place underwritten, and to the effect hereafter expressed (justice so requiring): We do therefore charge and command you, jointly and severally, that you omit not, but that by affixing these presents upon one of the pillars of the Royal Exchange of our City of London, at the usual time of the public resort of merchants thither, and by leaving thereon affixed a true copy hereof, you do monish and cite, or cause to be monished and cited peremptorily, all persons in general who have or pretend to have any right, title, or interest in the said ship or vessel, her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, that they

appear before our said Judge or his Surrogate, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, on the twentieth day after service of these presents, if it be a Court day, or else on the Court day next following, at the usual time for hearing causes, then and there to show and allege, in due form of law, a reasonable and lawful cause, if they have any, why the said ship or vessel, her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, should not be pronounced to have belonged, at the time of the capture and seizure thereof, to our enemies, and as such, or otherwise, liable and subject to confiscation, and to be adjudged and condemned as good and lawful prize. And further to do and receive in this behalf, as unto law and justice shall appertain; and that you duly intimate, or cause to be intimated peremptorily, to all persons in general aforesaid (to whom by the tenor of these presents we do also intimate), that if they shall not appear at the time and place above-mentioned, or appearing, shall not show a reasonable and lawful cause to the contrary, our said Judge or his Surrogate doth intend to and will proceed to adjudication on the said capture, and pronounce the said ship or vessel, her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, to have belonged at the time of the capture and seizure thereof to our enemies, and as such, or otherwise, liable to confiscation, and to be adjudged and condemned as good and lawful prize. The absence, or rather contumacy, of the persons so cited and intimated in anywise notwithstanding; and that you duly certify our said Judge or his Surrogate what you shall do in the premises, together with these presents, given at London, in our aforesaid Court, under the seal of the same for causes, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of our reign the nineteenth.

H. C. ROTHERY,  
Registrar.

Monition.

DYKE,  
Queen's Proctor.

*Marshal's Return.*

This monition was duly executed the 8th day of October, 1855, by affixing the same on one of the pillars of the Royal Exchange, in the City of London, during the usual time of merchants resorting thither, and thereby citing at the premises all persons in general having, or pretending to have, any right, title, or interest in the within-named ship "Achilles," her tackle, apparel, and furniture,

and the goods, wares, and merchandises laden therein, to appear at the time and place within-mentioned, and by leaving affixed thereon a true copy hereof.

E. JONES,  
Marshal of the Admiralty.

*6. Mention on Part of Admiralty Proctor to proceed to Adjudication.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to *Evan Jones*, Esquire, Marshal of the High Court of our Admiralty of England, and to his deputy whomsoever, greeting. Whereas the worshipful John Grey Middleton, Doctor of Laws, Surrogate of our beloved the Right Honourable Stephen Lushington, Doctor of Laws, our Lieutenant of the said Court, and in the same Court Official, Principal, and Commissary General and Special, and President and Judge thereof, and also to hear and determine all and all manner of causes and complaints as to ships, vessels, and goods seized and taken as prize, specially constituted and appointed, rightly and duly proceeding at the petition of our Procurator General in our Office of Admiralty, hath decreed all persons in general who have or pretend to have any right, title, or interest in the ship or vessel called "The Neptune" (whereof R. K. was master), her tackle, apparel, and furniture, and the freight due for the transportation of the cargo now or lately laden therein, seized and taken by officers of our Customs for the port of Hull, to be monished, cited, and called to judgment, at the time and place underwritten and to the effect hereafter expressed (justice so requiring): We therefore charge and command you, jointly and severally, that you omit not, but that by affixing these presents upon one of the pillars of our Royal Exchange of our City of London at the usual time of the public resort of merchants thither, and by leaving thereon affixed a true copy hereof, you do monish and cite, or cause to be monished and cited peremptorily, all persons in general who have or pretend to have any right, title, or interest in the said ship or vessel, her tackle, apparel, and furniture, and the said freight, that they appear before our said Judge or his Surrogate, in the Common Hall of Doctors' Commons, situate in the parish of St. Benedict, near Paul's Wharf, London, on the twentieth day after service of these presents, if it be a Court day, or else on the Court day next following, at the usual time for hearing causes, then and there to show and allege, in due form of law, a reasonable and lawful cause, if they have any, why the said ship or vessel, her tackle, apparel, and furniture, and the said freight, should not be pronounced to have belonged, at the

time of the capture and seizure thereof, to our enemies, and as such, or otherwise, liable and subject to confiscation, and to be adjudged and condemned as good and lawful prize and as droits and perquisites of us in our Office of Admiralty. And further to do and receive in this behalf, as unto law and justice shall appertain; and that you duly intimate, or cause to be intimated peremptorily, to all persons in general aforesaid (to whom by the tenor of these presents we do also intimate) that if they shall not appear at the time and place above mentioned, or appearing, shall not show a reasonable and lawful cause to the contrary, our said Judge or his Surrogate doth intend to and will proceed to adjudication on the said capture, and pronounce the said ship or vessel, her tackle, apparel, and furniture, and the said freight, to have belonged, at the time of the capture and seizure thereof, to our enemies, and as such, or otherwise, liable to confiscation, and to be adjudged and condemned as good and lawful prize and as droits and perquisites of us in our Office of Admiralty, the absence or rather contumacy of the persons so cited and intimated in anywise notwithstanding; and that you duly certify our said Judge or his Surrogate what you shall do in the premises, together with these presents. Given at London in our aforesaid Court, under the seal of the same for causes, the seventh day of September in the year of our Lord one thousand eight hundred and fifty-five, and of our reign the nineteenth.

H. C. ROTHERY,  
Registrar.

Monition.

TOWNSEND,  
Admiralty Proctor.

*Marshal's Return.*

This monition was duly executed the 10th day of September, 1855, by affixing the same on one of the pillars of the Royal Exchange in the City of London during the usual time of merchants resorting thither, and thereby citing at the premises all persons in general having or pretending to have any right, title, or interest in the within-named ship or vessel "Neptune," her tackle, apparel, and furniture, and the freight due for the transportation of the cargo now or lately laden therein, to appear at the time and place within mentioned, and by leaving affixed thereon a true copy hereof.

E. JONES,  
Marshal of the Admiralty.



7. *Monition on Part of Claimant to proceed to Adjudication.*

VICTORIA, by the grace of God of the United Kingdom of *Great Britain and Ireland Queen*, Defender of the Faith, to all and singular our vice-admirals, justices of the peace, mayors, sheriffs, bailiffs, marshals, constables, and to all other our officers, ministers, and others, as well within liberties and franchises as without, greeting. Whereas our beloved the Right Honourable *Stephen Lushington*, Doctor of Laws, Lieutenant of the High Court of Admiralty of *England*, and in the same Court Official, Principal, and Commissary General and Special, and President and Judge thereof, and also to hear and determine all and all manner of causes and complaints as to ships and goods seized and taken as prizes, specially constituted and appointed in a certain cause or business moved and prosecuted before him in our said court, on behalf of *R. K. of Great Grimsby* in our county of *Lincoln*, shipbuilder, the claimant on his own behalf as the owner and proprietor of the ship or vessel *Neptune* (whereof *T. K.* was master) at the time of the seizure thereof at *Great Grimsby* in our said county by *Edward Catchpole and Colby Atkinson Davies*, officers of our Customs belonging to the port of *Hull*, rightly and duly proceeding on the day of the date hereof, at the petition of the proctor of the said *R. K.*, alleging that the said ship or vessel had been seized at *Great Grimsby* aforesaid by the said *Edward Catchpole and Colby Atkinson Davies*, but that, notwithstanding the premises, no proceedings whatever have been had to bring the said ship or vessel to adjudication, hath decreed the said *Edward Catchpole and Colby Atkinson Davies*, and also *William Townsend*, Esquire, our Procurator General in our Offices of Admiralty, to be monished, cited, and called to judgment at the time and place underwritten, and to the effect hereafter expressed (justice so requiring). We do therefore by these presents strictly charge and command you, jointly and severally, that you omit not, by reason of a liberty or franchise, but that you monish and cite, or cause to be monished and cited peremptorily, the said *Edward Catchpole, Colby Atkinson Davies, and William Townsend* that they appear before our aforesaid Judge or his Surrogate in the Common Hall of Doctors' Commons, situate in the parish of *St. Benedict*, near *Paul's Wharf, London*, on the sixth day after the service of these presents, if it be a Court day, otherwise on the next Court day then next following, between the usual hours of hearing causes, there to proceed in our said Court to the legal adjudication of the said ship or vessel seized as aforesaid, whether good and lawful prize or not, or to show and allege in due form of law a reasonable and lawful cause (if any) why the said ship or vessel should not be

decreed to be released from the aforesaid seizure made in this behalf and restored to the said *R. K.*, the claimant, for his own use, as the owner and proprietor thereof, together with all costs, damages, and expenses arising or to arise from or by means of the said seizure, and farther to do and receive on this behalf, as unto law and justice shall appertain; and that you intimate moreover, or cause to be intimated peremptorily to the said *Edward Catchpole, Colby Atkinson Davies, William Nowell, and William Townsend* (to whom by the tenor of these presents we also intimate), that if they do not appear at the time and place aforesaid, or appearing do not show a reasonable and lawful cause to the contrary, our said Judge or his Surrogate doth intend to proceed and will proceed to decree the said ship or vessel to be released from the seizure aforesaid and to be delivered and restored to the said *R. K.* the claimant, for his own use as the owner and proprietor thereof, together with all costs, damages, and expenses arising or to arise from or by means of the said seizure, their absence, or rather contumacy, in anywise notwithstanding; and that you duly certify to our said Judge or his Surrogate what you shall do or cause to be done in the premises together with these presents. Given at *London* in our aforesaid Court, under the great seal thereof, the 30th day of *August*, in the year of our Lord 1855, and of our reign the 19th.

H. C. ROTHERY,  
Registrar.

Monition to proceed to adjudication,  
F. CLARKSON.

*Marshal's Return.*

This monition was personally served, on the 16th day of August, 1855, on the within-named William Townsend, Esquire, at his office No. 20. Great Knight Ryder Street, London, by showing the same to him under seal, and leaving with him a true copy hereof.

E. JONES,  
Marshal of the Admiralty.

*Return of Service of Monition.*

This monition was duly executed by showing the same under seal to the within-named Edward Catchpole, and by leaving with him a true copy thereof at the Custom House in the county of the

## APPENDIX C.

town of Kingston-upon-Hull, this 17th day of August, in the year 1855,

By me,  
WM. CAWKWELL.

Same on Colby Atkinson Davies.

In the Admiralty Prize Court.

The "Neptune," Thomas Keetley, master.

Appeared personally William Cawkwell, of the town of Kingston-upon-Hull, in the Court of the same town, attorney's clerk, and made oath that the contents of the foregoing certificates to which he hath set and subscribed his name were and are true.

WM. CAWKWELL.

On Friday, the 17th day of August, 1855, the said William Cawkwell was duly sworn to the truth of his affidavit, at Kingston-upon-Hull, in the Court of the same town,

Before me,

J. HAY HOLLES,

A Commissioner for administering oaths  
in the High Court of Admiralty.

8. *Affidavit as to Papers, when Prize seized in Enemy's Port, and no Papers found on board.*

Admiralty Prize Court.

Schooner "Polka," unknown master.

Brigantine "Louisa," unknown master.

Schooner "Livonia," unknown master.

Schooner "Louise Annalie," unknown master.

Schooner "Johan Carl," unknown master.

Schooner "Alexander," unknown master.

Schooner "Anna Catarina," unknown master.

Schooner "name unknown," unknown master.

Appeared personally A. C. K., Esquire, captain of her Majesty's steam-ship "Amphion," and A. C., Esquire, captain of her Majesty's steam-ship "Conflict," and made oath, that information having been received by them while cruising in the Baltic, that a number of Russian merchant vessels were lying in the port of Libau, the deponents proceeded there, and anchored within gunshot of the town;

and on the morning of the 17th of May the deponent, A. C. K., dispatched Captain C. with a summons to the governor of the town to "surrender the said Russian vessels within three hours;" that at 3.30 P. M. of the same day he (the said A. C. K.) received an answer to the said summons from the chief civil magistrate at *Libau*, stating that they were without efficient means of defence, and would readily send the said vessels out, but that they could not possibly do it within the time specified; whereupon the deponent caused the boats belonging to her Majesty's said ships to be manned and armed, and they proceeded therewith towards the said port; and on their arriving at the bridge, which is about a mile from the entrance of the port, the deponent, A. C. K., requested the principal persons present to point out the said Russian vessels in the said port, which they accordingly did; and thereupon the crews belonging to the said boats, by the orders of the deponents, took possession of the same, which proved to be as follows, viz.: The schooner "*Polka*," the brigantine "*Louisa*," the schooner "*Livonia*," the schooner "*Louise Annalie*," the schooner "*Johan Carl*," the schooner "*Alexander*," the schooner "*Anna Catarina*," the schooner "*name unknown*," and brought them out into the road; and as they were not in a condition to perform a voyage to England, afterwards conveyed them to the port of *Memel*, where they now remain to await the decision of the Admiralty Court. And the deponent further made oath; that at the time the said vessels were so taken possession of as aforesaid, they were found to be all dismantled, their sails unbent, and moored head and stern; that some of them were aground, and that the schooner "*Alexander*" and schooner "*name unknown*" were scuttled, and the whole of them deserted by their crews; and that there were no papers whatever on board of the said vessels; whereupon the deponents made inquiries of those bystanders who appeared interested in the vessels, but they could not obtain any information respecting them; they therefore verily and in their consciences believe that the same were taken away by the masters when they deserted the said ships, the date of which desertion is not known.

<p>On the fourth of July, 1854, the said A. C. K. and A. C., Esquires, were duly sworn to the truth of this affidavit, by virtue of the an- nexed commission,</p>	}	<p>A. C. K., Captain H. M. S. "Amphion." A. C., Captain H. M. S. "Conflict."</p>
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Before me,

W. J. HERTSLET,  
H. B. M. Vice-consul.

*9. Claim for Part of Cargo by Owner on behalf of Self and Partner.*

**Admiralty Prize Court.**

The "*Rapida*," Bockelman, master.

The claim of A. R. L., of *Liverpool*, in the county of *Lancaster*, merchant, on behalf of himself and of his partner S. F. L., of *Montevideo*, merchant, respectively subjects of our Lady Sovereign the Queen, the true, lawful, and sole owners and proprietors of *one hundred and sixty* casks of tallow, *five hundred* tons of preserved meats, *fourteen* hales of hide cuttings, *one hundred and seventy-seven* tons of bones (more or less), and *three hundred and five* tons (more or less) of bone ash, being part of the cargo which was laden and on board the said ship or vessel "*Rapida*" (whereof P. B. was master) at the time of the seizure thereof at the port of *Liverpool* by the officers of her Majesty's Customs at that port, for the said part of the said cargo, on behalf of and as the true, lawful, and sole property of himself and of the said S. F. L., and for all loss, costs, charges, damages, and expenses which have arisen or shall or may arise by reason or means of the capture and detention of the said cargo.<sup>1</sup>

J. H.

A. R. L.

<sup>1</sup> In the *Sally*, cited *Adas*, 3 Rob. 302., reference is made to the "*Charles*," *Havernerswerth*, in 1741, "in which the form of the attestation was directed to be prepared by the whole Bar." No case exactly answering this description can be found, but it may possibly be the same with that of the "*Charles*," *Henry Hammond*, master, taken by the Spaniards, March, 1743, and retaken in the following month of May, and which was a case of recapture, the question being, whether the property had, by length of possession, become vested in the first captor. The following extract is from the printed papers in the appeal of that case:

*Tenor of Claim.*

The appellants *James Crokatt*, *Richard Acland*, and *John Govan*, of the City of *London*, merchants, subjects of the Crown of *Great Britain*, the real and true owners

and proprietors of the ship called the "*Charles*" (whereof *Henry Hammond* was master), and of her tackle, apparel, and furniture, and likewise the said appellant *James Crokatt*, and the other appellants *Handley & Palmer*, *Rogers & Dyson*, *William Pomeroy & Sons*, *William Sitwell & Company*, *Thomas Fludgier*, and *Thomas Marson*, all of *London*, merchants, subjects of the Crown of *Great Britain*, the real and true owners and proprietors of the goods, wares, merchandises, and cargo laden on board the said ship at the time of the capture and recapture thereof, entered their claim in His Majesty's High Court of Admiralty of *England*; that is to say, the said *James Crokatt* as owner of the three-fourth parts of the said ship; the said *Richard Acland*, as owner of one-eighth part thereof; and the said *John Govan*, as owner of the other one-eighth part thereof; and the said *James Crokatt*, as owner of 244

barrels of rice, 300 barrels of turpentine, 315 barrels of pitch, 87 barrels of tar, 19 hogsheads of deer-skins, and 7 tons of brasiletto, part of the cargo (of the respective marks and numbers in the claim set forth); the said *Handley & Palmer* as owners of 1 hogshead of deer-skins; the said *Rogers & Dyson* as owners of 1 hogshead of deer-skins; the said *William Pomeroy & Sons* as owners of 1 hogshead of deer-skins; the said *William Sitwell & Company* as owners of 1 hogshead of deerskins; the said *Thomas Fludgier* as owner of 24 hogsheads of deer-skins; and the said *Thomas Marson* as owner of 4 hogsheads of deer-skins; other parts of the said cargo, all the respective parts of the cargo so claimed being marked and numbered as mentioned by the several claimants in their claim.

And their claim was attested by the following affidavit, which was annexed thereto:—

On which day appeared personally *Henry Hammond* of *Charles Town* in *South Carolina*, mariner, and made oath upon the Holy Evangelists, as followeth: to wit, that on or about the first day of the month of *November*, in the year of our Lord 1738, he was appointed master of the ship called the "*Charles*" (formerly called the "*Samuel*") by Mr. *James Crokatt*, then of and at *Charles Town* aforesaid, and now of *London*, merchant, then and now the chief owner of the said ship; and that this deponent has made several voyages in her from *America* into *Europe*, and back again; and that in her last voyage, which was from *Carolina* to *London*, the said ship "*Charles*" was taken and seized on or about the 13th day of *March* last, about 60 leagues West from *Sicily*, in the latitude 43, by a *Spanish* privateer, called the *Saint Michael* (*Don Domingo Del Palle*, commander); and that, for some time

day of *May* last past, the said ship the "*Charles*" was retaken at sea by His Majesty's ships the "*Launceston*" (*Peter Warren*, Esquire, commander) and the "*Port Mahon*" (the Hon. *Henry Aylmer*, Esquire, commander), and first brought to *Plymouth*, and from thence carried to *Portsmouth*; and this deponent saith that he has continued on board the said ship the "*Charles*" from the time she was taken by the *Spanish* privateer to the time she was brought into *Portsmouth*, as is aforesaid; that he very well knows that the said ship, the tackle, apparel, and furniture, did, at the time she was so taken by the *Spanish* privateer and retaken by the said two ships of war, belong to the said *James Crokatt*, to *Richard Acland*, now deceased, and to *John Govan*, all of *London*, merchants; and that the said *James Crokatt*, and also Messrs. *Handley & Palmer*, Messrs. *Rogers & Dyson*, *William Pomeroy & Sons*, *William Sitwell & Company*, *Thomas Fludgier*, and *Thomas Marson*, all of *London*, merchants, then were and now are, either in their own right, or by consignment, the real true owners and proprietors of all and every part of the goods, wares, merchandises, and cargo on board the said ship the "*Charles*" at the time of the pretended capture and recapture thereof; and this deponent further saith that he well knows that all the said owners and proprietors of the said ship the "*Charles*," and of her said cargo, were and are subjects of the Crown of *Great Britain*; and that he verily believes the contents of the claim hereunto annexed to be just and true, and that the several owners thereof are or will be able to make full specification of the property thereof; and that no *Spaniard* or subject of the King of *Spain* had or have any right, title, interest, or property therein, or in any part thereof.

*Affidavit annexed to Claim for Part of Cargo.*

## Admiralty Prize Court.

The "Rapida," Bockelman, master.

Appeared personally A. R. L. of *Liverpool*, in the county of *Lancaster*, merchant, and made oath, that he is duly authorized to make the claim hereto annexed on behalf of himself and of his partner S. F. L., of *Monte Video*, merchant, respectively subjects of our Sovereign Lady the Queen, the two lawful and sole owners and proprietors of *one hundred and sixty* casks of tallow, *five hundred* tons of preserved meats, *fourteen* bales of hide cuttings, *one hundred and seventy-seven* tons (more or less) of bones, and *three hundred and five* tons (more or less) of bone ash, being part of the cargo which was laden and on board the said ship or vessel "Rapida" (whereof P. B. was master) at the time of the seizure thereof at the port of *Liverpool* by the officers of her Majesty's Customs at that port; and he further made oath, that he verily believes that neither the Emperor of all the *Russias* nor any of his subjects, or others inhabiting within any of his countries, territories, or dominions, nor any other enemies of the Crown of Great Britain and Ireland, had at the time of the seizure thereof as aforesaid, or now have, directly or indirectly any right, title, or interest in or to the said part of the said cargo, or any part thereof; and, lastly, that the claim hereto annexed is a true and just claim, and that he shall be able to make due proof and specification thereof.

On the seventeenth day of November, 1854, the  
 said A. R. L. was duly sworn to the truth of this } A. R. L.  
 affidavit,

Before me,

J. H.

Surrogate.

10. *Claim for Ship by Master and sole Owner.*

In the High Court of Admiralty.

The *thirty-first* day of August, in the year of our Lord *one thousand eight hundred and fifty-four*.

The "Rapid," J. R. H., master.

The claim of the said J. R. H., the master of the said vessel "Rapid," a subject of his Majesty the King of Denmark, for and

on behalf of himself, the true, lawful, and sole owner and proprietor of the said ship, her tackle, apparel, and furniture, at the time she was taken and seized as prize whilst lying at the port of Hull, in the kingdom of England, by the officers of her Majesty's Customs at that port; and for freight, demurrage, and all such loss, costs, and charges, damages, and expenses as have arisen and been incurred, or shall or may arise and be incurred by reason of the capture and detention aforesaid.

This is the claim referred to in the affidavit of }  
 J. R. H., sworn this *thirty-first day of August*, } J. R. H.  
*one thousand eight hundred and fifty-four*, }  
 Before me,  
 H. C., J. P.

*Affidavit.*

In the High Court of Admiralty.

*The thirty-first day of August, 1854.*

The "Rapid," Jung Rord Hansen, master.

Appeared personally the said J. R. H., the master and owner of the said vessel the "Rapid," and made oath that he is a subject of his Majesty the King of *Denmark*, and that the said ship, her tackle, apparel, and furniture, mentioned in the claim hereunto annexed, at the time she was taken and seized as prize by the officers of her Majesty's Customs at the port of Hull, in the kingdom of England, was the true, lawful, sole, and entire property of this deponent at the time of such capture, and doth so belong to him at this present time, and would have so belonged in case she had not been seized and taken as aforesaid, and will so belong to him in case the same shall be restored, and until sold and disposed of for his account and benefit. And that no person or persons belonging to or being a subject or subjects of his Majesty the Emperor of all the *Russias*, or inhabiting within any of the territories of the *Russian* government, their factors or agents, nor any person or persons whomsoever, enemies of the Crown of Great Britain and Ireland, had at the time of the capture aforesaid or now have any right, title, or interest in the said ship, her tackle, apparel, and furniture, or any part thereof. And he lastly saith, that the claim hereunto



annexed is a true and just claim, and that he believes he shall be able to make due proof and specification thereof.

On the thirty-first day of August, one thousand eight hundred and fifty-four, the said J. R. H. was duly sworn to the truth of this affidavit at the borough of *Kingston-upon-Hull*, the contents of the same having first been read over and explained to him in the German language by C. G., of the borough of *Kingston-upon-Hull*, merchant, who was first sworn duly to interpret the same, } J. R. HANSEN.

Before me,

HENRY COOPER, J. P.

Appeared personally C. G., of the borough of *Kingston-upon-Hull*, merchant, and made oath that he hath duly interpreted, read over, and explained in the *German* language the above affidavit to J. R. H., the deponent therein named, and also the oath administered to him previous to the same affidavit being made and sworn by him.

On the first day of August, one thousand eight hundred and fifty-four, the said C. G. was duly sworn to the truth of this affidavit at the borough of *Kingston-upon-Hull*, } C. G.

Before me,

H. C., J. P.

#### 11. *Claim for Ship by Owner.*

In the Admiralty Prize Court.

14th day of August, 1855.

The "*Neptune*," Thomas Keetley, master.

The claim of R. K., of Great Grimsby, in the county of Lincoln, ship-owner and ship-builder, on behalf of himself as the true, lawful, and sole owner and proprietor of the above-named ship or vessel "*Neptune*," her tackle, apparel, and furniture, at the time of her seizure by the officers of Her Majesty's Customs at the port of Great Grimsby, and for all losses, costs, charges, damages, demurrage, and expenses which have arisen or shall or may arise by reason or means of the seizure and detention of the said ship or vessel as prize.

R. K.

J. A.

*Affidavit.*

In the Admiralty Prize Court.

The "Neptune," Thomas Keetley, master.

Appeared personally R. K., of Great Grimsby, in the county of Lincoln, ship-owner and ship-builder, a subject of Her Majesty the Queen of Great Britain, and made oath that he is duly authorised to claim the said vessel "Neptune," her tackle, apparel, and furniture, on behalf of himself, the true, lawful, and sole owner of the said ship or vessel "Neptune," which is and was a British registered vessel at the time of the seizure thereof as prize by the officers of Her Majesty's Customs at the said port of *Great Grimsby*. And he further made oath that neither the Emperor of all the *Russias*, nor any of his subjects or others inhabiting within any of his territories or dominions, nor any others enemies of the Crown of Great Britain and Ireland, had, at the time of seizure thereof as aforesaid, or now have, directly or indirectly, any right, title, or interest in or to the said ship or vessel, her tackle, apparel, and furniture, but that the same was at the time of the seizure, and still is, and if restored will be, the sole property of this appearer; and, lastly, that the claim hereto annexed is a true and just claim, and that he shall be able to make due proof and specification thereof.

On *Tuesday* the *fourteenth* day of *August*, 1855, the  
said R. K. was duly sworn to the truth of this affi- } R. K.  
davit at Great Grimsby aforesaid,

Before me,

H. J. V.

A commissioner to administer oaths in Admiralty.

12. *Claim for Ship and Cargo by Agent.*

Admiralty Prize Court.

The "Dania," Hans Christophersen Egholm, master.

The claim of D. H. G., of . . . . . in the City of London, merchant (one of the partners in the house of trade known by the style or firm of Messrs. H. S., Son, and Co., of the same place, merchants), on behalf of *Johannes Kruuse*, of Nyborg, in the island of *Funen*, in the kingdom of *Denmark*, a subject of His Majesty the King of *Denmark*, the true, lawful, and sole owner and proprietor of the above-named ship or vessel "*Dania*" (whereof *Hans*

*Christophersen Egholm* was master), and the cargo laden on board thereof at the time of the capture and seizure thereof by Her Majesty's ships of war "*Archer*," E. H., Esquire, commander, and "*Geyser*," R. D., commander, for the said ship or vessel "*Dania*," and cargo, as the true, lawful, and sole property of the said *Johannes Kruuse*, and for all losses, costs, charges, damages, and expenses which have arisen or shall or may arise by reason or means of the capture and detention of the said ship or vessel and cargo as aforesaid.

D. H. G.

J. A.

*Affidavit.*

Admiralty Prize Court.

The "*Dania*," *Hans Christophersen Egholm*, master.

13th June, 1855.

Appeared personally, D. H. G., of . . . . . in the City of London, merchant (one of the partners in the house of trade known by the style or firm of Messrs. H. S., Son, and Company, of the same place, merchants), and made oath that he is duly authorised to make the claim hereto annexed as agent and on behalf of *Johannes Kruuse*, of *Nyborg*, in the island of *Funen*, in the kingdom of *Denmark*, a subject of His Majesty the King of *Denmark*, the true, lawful, and sole owner and proprietor of the above-named ship or vessel "*Dania*" (whereof *Hans Christophersen Egholm* was master), and the cargo laden on board at the time of the capture and seizure thereof by Her Majesty's ships of war "*Archer*," E. H., Esquire, commander, and "*Geyser*," R. D., commander; and he further made oath that he verily believes that neither the Emperor of all the *Russias*, nor any of his subjects or others inhabiting within any of his countries, territories, or dominions, nor any others enemies of the Crown of Great Britain and Ireland, had, at the time of the capture or seizure thereof as aforesaid, or now have, directly or indirectly, any right, title, or interest in or to the said ship or vessel "*Dania*" or cargo, or any part thereof; but that the same, at the time of the capture and seizure thereof, were and still are, and if restored will be, the property of the said *Johannes Kruuse* only; and he lastly made oath that he verily believes that the claim hereto annexed is a true and just claim, and that he shall be able to make due proof and specification thereof.

Same day the said D. H. G. was duly sworn to } D. H. G.  
the truth of this affidavit and claim annexed, }

Before me,

J. A., Surrogate.

*Commission of Survey.*

GEORGE, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to Edward Simmonds Ommaney and Thomas Hurry of Yarmouth, merchants, greeting. Whereas our beloved the Right Honourable Sir William Scott, Knight, Doctor of Laws, our Lieutenant of the High Court of our Admiralty of England, and in the same Court Official, Principal, and Commissary General and Special, and President and Judge thereof, and also to hear and determine all and all manner of causes and complaints as to ships and goods seized and taken as prize, specially constituted and appointed in a certain business moved and prosecuted before him in our said Court, on our behalf, against the ship called "Eleonora Wilhelmina" (whereof Michael Zimmerman was master), her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, taken by our frigate "L'Aimable," Clotworthy Upton, Esquire, commander, and brought to the port of Yarmouth; and against the said Michael Zimmerman, the master and claimant of the said ship and cargo, intervening rightly and duly proceeding at petition of our Procurator-General, decreed a commission to issue to survey the mast-pieces and spars, part of the cargo of the said ship "Eleonora Wilhelmina" (justice so requiring). We do therefore, by these presents, authorise and empower you, and strictly charge and command you, that you choose two good and lawful men, well experienced in such affairs, and indifferent to the aforesaid parties, and swear them faithfully and justly to survey the dimensions of the mast-pieces and spars, part of the cargo of the said ship "Eleonora Wilhelmina," and the same being so surveyed, that they make their report thereof to our aforesaid judge, and that you duly transmit the said report subscribed by you and the said surveyors, together with these presents. Given at London, in our aforesaid Court, under the Great Seal thereof, the nineteenth day of December, in the year of our Lord one thousand eight hundred and six, and of our reign the forty-seventh.

ARDEN,  
Registrar.

Commission of Survey,  
BISHOP.

*Return of Commissioners under Commission of Survey.*

A true report of the dimensions of such of the mast-pieces and spars, part of the cargo of the ship called "Eleonora Wilhel-

mina," whereof Michael Zimmerman was master, as have been surveyed at Great Yarmouth, in the county of Norfolk, the 5th day of January, 1807, by virtue of the Commission hereunto annexed.

We, Edward Simmonds Ommanney and Thomas Hurry, the Commissioners named in the Commission hereto annexed, do hereby certify that by virtue thereof we have chosen William Hazard and Robert Searum, two good and lawful men, well experienced in such affairs, and indifferent to the parties concerned, and have duly sworn them faithfully and justly to survey the dimensions of the mast-pieces and spars mentioned in the Commission hereunto annexed; and we the said William Hazard and Robert Searum, whose names are hereunto subscribed, do hereby certify that by virtue of our oaths we have faithfully and justly surveyed the dimensions of such the mast-pieces and spars on board of the said ship as can be measured without taking out the greater part of the said cargo, which dimensions are as follows, viz. :—

One Riga round mast, commonly called a hand mast-piece, seventy-two feet long, and at about six feet from the heel twenty-one inches in diameter. It is impossible, without removal, to ascertain the diameter of the said mastpiece at the usual place of measurement, which is one third from the heel. Three other Riga round masts, commonly called hand mast-pieces, about seventy feet long, and measured at about one third from the heel, being the usual place of measurement, of the following diameters, viz. : one nineteen inches and a half, one twenty inches, and one nineteen inches.

Double Riga boat masts or spars, fifty-two feet long, and from eight inches and a half to twelve inches diameter. The number unknown.

Ruckers from twenty to thirty-six feet in length; the number unknown.

In witness whereof, we have hereunto set hands the 10th day of January, 1807.

	EDWARD S. OMMANNEY,	} Commissioners.
	THOMAS HURRY,	
WM. HAZARD,	} Surveyors.	
ROBERT SEARUM,		

*Affidavit.—Nature of Cargo.*

On the eighteenth day of May, one thousand eight hundred and five,

Appeared personally Eli Williams Morgan of Great Yarmouth, in the county of Norfolk, cheesemonger, and William Smith the younger, of the same town, late a shipmaster, and now storekeeper

to the contractor at Yarmouth for supplying His Majesty's ships on that station with provisions, and severally made oath that they have this day re-surveyed and re-examined the cargo of cheese on board the ship or vessel called the "Zeldenrust," Luppe Habber Rozenna master, lately seized and taken as prize by His Majesty's frigate the "Penelope," William Robert Broughton, Esquire, commander, and sent into the port of Yarmouth, and it is their opinion that the said cheese is such as is used on board French and Spanish ships of war.

The same day the said Eli Williams Morgan  
and William Smith were sworn to the } E. W. MORGAN.  
truth of the above affidavit, at Great } WM. SMITH, JUN.  
Yarmouth aforesaid,  
Before me,

RD. MILLER, JUN. { A Commissioner of His Majesty's  
Court of King's Bench, Common  
Pleas, and Exchequer.

*Affidavit — Perishable Condition of Cargo.*

On the tenth day of June, one thousand eight hundred and five,

Appeared personally Eli Williams Morgan, of Great Yarmouth, in the county of Norfolk, cheesemonger, and William Smith the younger, of the same town, late a shipmaster, and now storekeeper to the contractor at Yarmouth for supplying His Majesty's ships on that station with provisions, and severally made oath, that they have this day in warehouses in Great Yarmouth aforesaid carefully surveyed and examined the cargo of cheese lately landed out of the ship or vessel called the "Zeldenrust," Lupper Habber Rozenna, master, which was lately seized and taken as prize by Her Majesty's frigate the "Penelope," Robert Broughton, Esquire, commander, and sent into the port of Yarmouth; and that part of the said cheese is decayed, and the rest in a decaying state; and that it is for the interest of all persons interested therein to have the same immediately sold.

The same day the said Eli Williams  
Morgan and William Smith were sworn } E. W. MORGAN.  
to the truth of the above affidavit, at Great } WM. SMITH, JUN.  
Yarmouth aforesaid.  
Before me,

RD. MILLER, JUN. { A Commissioner of His Majesty's Courts  
of King's Bench, Common Pleas, and  
Exchequer.



officers of Her Majesty's Customs at the port of Hull ; and against Jung Rord Hansen, the master of the said ship or vessel, and the claimant as the sole owner and proprietor thereof, and also claimant of the freight ; and Alexander Schussen, one of the partners in the firm of John Henry Schroden and Company, of No. 6. Lime-street-square, in the city of London, merchant, the claimant on behalf of himself and partners, the owners and proprietors of the said cargo, intervening, and against all persons in general.

TOWNSEND.

STOKES.

Stokes prayed the Judge to admit the claim of his party.

Townsend prayed the Judge to reject the said claim, and condemn the said ship or vessel as good and lawful prize.

The Judge, having heard advocates and proctors on both sides, and having read the claim and the proofs by interlocutory decree, rejected the said claim, and, in pain of parties cited not appearing, pronounced the said ship or vessel to have belonged, at the time of the capture and seizure thereof, to enemies of the Crown of Great Britain, and, as such or otherwise subject and liable to confiscation, and condemned the same, as also the freight due for the transportation of the cargo lately laden therein, as good and lawful prize, and as droits and perquisites of Her Majesty, in her Office of Admiralty, seized by the officers of Her Majesty's Customs at the port of Hull ; and, as further petition of Townsend, directed the said ship or vessel to be appraised and sold, and assigned. Rothery to bring in the freight the first session of next Term.

*Instrument of Appeal.*<sup>1</sup>

In the name of God, amen. Before you, the Notary Public and witnesses of good faith and credit here present, I, Francis Hart Dyke, Esquire, Her Majesty's Procurator General, do exhibit as such

<sup>1</sup> The following note contains some interesting extracts on the subject of Courts of Appeal in Admiralty causes, and is taken from the printed paper in the case of the "Bevor," *Medina v. Norris*, Jan. 17. 1785.

An objection had been taken to the appeal because *no petition of appeal* had been preferred to H. M. in Council, but their Lordships pronounced for their jurisdiction.

All appeals from sentences in the Court of Admiralty, as well in suits relating to prizes as in all others, were anciently made to the king, and the proceedings on these appeals have always been according to the forms proscribed by the Civil or Admiralty Law.<sup>1</sup>

In the Patent Rolls in the Tower of the reign of King *Richard II.* there are several commissions to

<sup>1</sup> Rot. 33 Ed. 1. De superioritate Maris Angliæ et Jure Admiralitatis

in eodem. Printed in Selden Maro, Claus. lib. 1. c. 2<sup>a</sup>



and make myself a party for our Sovereign Lady the Queen, with a design and intent to appeal from and complain of all and singular

hear appeals from sentences of the Court of Admiralty, in some of which the appeal is mentioned to be made to the King<sup>1</sup>, in some to the King and his council<sup>2</sup>, in others to the King and his audience<sup>3</sup>, and in others to the King's audience.<sup>4</sup>

In the reigns of *Henry IV.*<sup>5</sup>, *Henry V.*<sup>6</sup>, and *Henry VI.*<sup>7</sup> the appeals were commonly expressed to be *ad regem et audientiam suam*, and they continued in that form during several of the subsequent reigns.

In the reign of *Henry VIII.* they were mentioned to be made to the King in his Court of Chancery<sup>8</sup>, and in the reign of Queen *Elizabeth* the appeal was sometimes expressed to be made to the Queen in her Court of Chancery<sup>9</sup>, and in some instances to the Queen and her Court of Chancery.<sup>10</sup> None of these appeals were heard or determined by the King in person, or by his council, or by the Court of Chancery; but by certain Judges, delegates appointed by the crown, by a distinct Commission which issued for hearing and determining each appeal in the same manner as is at present used in appeals from Ecclesiastical Courts.

In the fourth year of the reign of King *Charles I.* the course of appealing with regard to prize causes was, as the Commission recites<sup>11</sup>, for reasons of state, varied, and a gene-

ral commission issued in that year to the Lord Treasurer and six other lords of the Privy Council, constituting them standing Commissioners to hear and determine all appeals from the Court of Admiralty in cases of prize.<sup>12</sup>

About three years after the erecting this new Commission the Earl of *Warwick*, having taken a ship called the "*Augustine*" of *Genoa*, which was claimed by *Francis Massola*, a *Genoese*, the Judge of the Admiralty decreed the ship to be restored to *Massola*; upon which the Earl appealed to the King in his Court of Chancery, and sued out a commission of delegates directed in the usual form to particular Judges delegates to hear and determine the same; but by an Order of Council of the 31st of *December*, 1631, the hearing the said appeal was declared to belong to the standing Commissioners appointed by the said Commission of the fourth of *Car. I.*, and this resolution of the King and council was signified to the Lords Commissioners by a new Commission under the great seal tested the 22nd of *June*, 7 *Car. I.*<sup>13</sup> The Earl of *Warwick*, for anything that appears to the contrary, acquiesced under this determination, and the authority of the Commissioners has not since been questioned.

<sup>1</sup> Selden Dis. ad Fletam, 531. Rot. Pat. 4 H. 6. par. 2. m. 11.; and Rot. Pat. Francie, 6 R. 2. m. 21., printed in Prynne's Animad. pp. 35. 118.

<sup>2</sup> Rot. Pat. 13 R. 2. par. 2. m. 27.

<sup>3</sup> Rot. Pat. 6 R. 2. par. 1. m. 12. dorso.

<sup>4</sup> Rot. Pat. 17 R. 2. par. 1. m. 8.

<sup>5</sup> Rot. Pat. 15 R. 2. par. 2. m. 36.

<sup>6</sup> Rot. Pat. 11 H. 4. par. 1. m. 12. Printed in Prynne's Animad. p. 402.

<sup>7</sup> Rot. Pat. 6 H. 5. m. 17.

<sup>8</sup> Rot. Pat. 25 H. 6. par. 2. m. 21.

<sup>9</sup> Stat. 25 H. 8. c. 19. s. 4.; and stat. 8 Eliz. c. 5.

<sup>10</sup> Rot. Pat. 45 Eliz. par. 5.

<sup>11</sup> Rym. Fœd. vol. xix. p. 300. col. 1.

<sup>12</sup> Rym. Fœd. vol. xix. p. 7.

<sup>13</sup> Rym. Fœd. vol. xix. p. 300.

the nullities, iniquities, injuries, injustices, and errors hereinafter mentioned, and equally and alike principally complaining of them

The Commission of the fourth *Car. I.* continued in force until the tenth *Car. I.*, when a new Commission issued to the Earl of *Portland* and six other Lords of the Privy Council.<sup>1</sup>

On the 14th of *March*, in the seventeenth of King *Charles II.* a like commission issued to the Duke of *Buckingham* and twelve other Lords of the Privy Council.<sup>2</sup>

On the 16th of *August*, in the second year of the reign of King *William* and Queen *Mary* a new Commission in the like form issued directed to all the Lords of the Privy Council by name.<sup>3</sup>

On the 20th of *October*, in the first year of the reign of Queen *Anne*, a like Commission issued, directed to all the Lords of the Privy Council by name, appointing them and all and every Her Majesty's Privy Councillors for the time being to be Commissioners for receiving and determining prize appeals.<sup>4</sup>

The Lords of the Privy Council, in the exercise of this jurisdiction, have, as appears by their register books, constantly proceeded according to the forms of the Civil or Admiralty Law, and have made use of different officers instead of the Clerks of the Council; a registrar appointed by their Lordships<sup>5</sup> takes their minutes and draws up their Lordships' orders and decrees; and all appeals prayed to the King in cases of prize have ever since the year 1628, been received and allowed by their Lordships without any previous *petition*

*of appeal to or reference from His Majesty*, and the Lords Commissioners for prize appeals have constantly proceeded to affirm or reverse the sentence complained of without making any report of their opinion to His Majesty. Before the year 1708 appeals from the Vice-Admiralty Courts in the *Plantations* were always made to the High Court of Admiralty in *England*, the authority of the Lords Commissioners for hearing and determining prize appeals being confined to cases *sentenced or adjudged in the Court of Admiralty of England*. But in the year 1708 the form of the Commission was varied, and the appeal was given directly from the Courts of Admiralty in the *Plantations to the Queen in Her Privy Council* by the following clause in the Act for encouragement of the trade to *America*.—

"It is enacted, that if any captor or captors, claimant or claimants, shall not rest satisfied with the sentence given in such Court of Admiralty, it shall and may be lawful to the party or parties thereby aggrieved to appeal from the said Court of Admiralty to Her Majesty in Her Privy Council, such appeal to be allowed in the like manner as appeals to Her Majesty are now allowed from the Court of Admiralty within this kingdom, so as the same be made within fourteen days after sentence and good security be likewise given by the appellant or appellants that he or they will ef-

Stat. 6 Anne,  
c. 37. § 8.

<sup>1</sup> Rym. Fœd. vol. xix. p. 581.

<sup>2</sup> Pat. 17 Car. 2. par. 2. m. 5.

<sup>3</sup> Pat. 2 W. & M.

<sup>4</sup> Pat. 1 Anne, par. 10.

<sup>5</sup> Register Book of the Lords Commissioners of Prizes, No. 1. f. 52 a., where there is a grant signed by Lord Chief Justice *Holt* and

three others of the Lords Commissioners of Prizes, appointing *Thomas Bedford* to be registrar to the Lords Commissioners for attesting their sentences, decrees, and acts, keeping their record and seal, examining witnesses, &c.

and every of them, do, by this present instrument in writing, say, allege, and in law articulately propound as follows, to wit: —

fectually prosecute such appeal and answer the condemnation, as also pay treble costs as shall be awarded by Her Majesty in case the sentence of such Court of Admiralty be affirmed and so as execution be not suspended by reason of any such appeal, anything in this Act contained to the contrary thereof in anywise notwithstanding."

The intention of this statute we apprehend was not to vary the jurisdiction by which these appeals were ultimately to be determined, but only to take away one instance, i. e. the appealing first to the High Court of Admiralty and the limiting the appeal to be to the King in his Privy Council, was, we conceive, only to show that these prize appeals were to be heard by the Lords of the Council, all other appeals from the Court of Admiralty here, except in cases of prize, being made to the King in his Court of Chancery; and, agreeable to this construction, the Act taking place on the 24th of June, 1708, her late Majesty, by a new Commission dated the 16th of September, 1708, directed to all the Lords of the Privy Council by name, revoked the Commission which in the first year of her reign had been granted to the Lords of the Council for hearing prize appeals, and after reciting that in causes of prizes suits many times happened in the High Court of Admiralty here, and the Courts of Admiralty in the Plantations in America, whereupon sentence being given, the party against whom such sentence had or should be given might desire to appeal to some other judge or commissioner, therefore the Queen thereby appoints them and all and every her Privy Councillors for the time being

to be commissioners for receiving, hearing, and determining of appeals in the cases aforesaid; and they were thereby impowered, upon any appeals in due form of law, made in that behalf, to review and re-examine the proceeding had and sentence appealed from in any case or cases sentenced or judged in the High Court of Admiralty here or in any of the Courts of Admiralty in any of the plantations of America concerning prizes taken or to be taken.<sup>1</sup>

On the 16th of December, 1708, the Commission of the 16th of September, 1708, was revoked, and a new Commission was issued in the same words, save that the words *Our High Court of Admiralty here* were omitted, and in their place *Our Courts of Admiralty in this our Kingdom of Great Britain*, were inserted<sup>2</sup>, and then follow the words, *and the Courts of Admiralty in our Plantations in America*, as in the former Commission. This last Commission continued in force until the 17th of February, 1714, when it was revoked, and a new Commission in the same words, *mutatis mutandis*<sup>3</sup>, was granted, which being determined by the demise of His late Majesty, a new Commission issued to your Lordships dated the 16th of May, 1728, in the same form which is still subsisting.<sup>4</sup>

The Lords Commissioners of Prizes being in this manner impowered to hear and determine appeals from the Courts of Admiralty in the Plantations of America in causes of prizes, they have ever since the year 1708 exercised this jurisdiction without the least interruption; all appeals in case of prize from the Plantations having been

<sup>1</sup> Pat. 16 Sept. 1708, 7<sup>mo</sup>. Annæ.

<sup>2</sup> Pat. 16 Dec. 7<sup>mo</sup>. Annæ.

<sup>3</sup> Pat. 17 Feb. 1 Geo. 1.

<sup>4</sup> Pat. 16 May, 1 Geo. 2.

That a certain cause of prize was lately depending before the Right Honourable Stephen Lushington, Doctor of Laws, Lieutenant,

constantly allowed, with their Lordships, in the like manner as appeals to His Majesty from the Court of Admiralty here are allowed, and their Lordships have heard and determined all those appeals by virtue of their Commission, without any previous petition of appeal to His Majesty or any order of reference from him.

In the course of these appeals from the Plantations, the proceedings have always been according to the forms of the Court of Admiralty here, and for that purpose their Lordships have usually referred the expediting all intermediate acts, preparatory to the hearing of such<sup>1</sup>, as the allowing or receiving appeals, the admissibility of any new allegations pleading facts not pleaded in the Court below, granting commissions for examining witnesses on such new allegations, &c. to a surrogate named by their Lordships whom they are empowered by their Commission to appoint. Whereas in the method of proceeding by petition of appeal to His Majesty no new facts are admitted to be proved, the cause being always heard and determined on the proofs made use of in the Court below.

It is evident from the records above cited that from the time of *Richard II.*, the King has constantly exercised this branch of his prerogative of hearing and determining Admiralty appeals, not in person, but by Commissioners appointed from time to time for that purpose.

The act of the 6th of Queen *Anne* hath no restrictive words to tie up the execution of this power to the King personally. It indeed directs the appellant to give security to pay such costs as shall be awarded by His Majesty. If the Lords Com-

missioners award costs, it is by virtue of the power delegated to them by His Majesty, and may without any impropriety be said to be awarded by His Majesty, being awarded by Commissioners deputed by him for that purpose.

The Lord *Coke* in his *Second Institutes*, page 186., lays it down as a rule, that when any judicial act is by an Act of Parliament referred to the King, it is understood to be done in some Court of Justice according to law and not by the King personally.

Where the King is visitor, he usually exercises that authority, either by his Lord Chancellor, or by Commissioners. Writs of error and proceedings thereupon in Parliament and in the King's Bench are *coram domino rege*, and yet the judgments are never given by the King personally.

It is apprehended, this prerogative of the Crown of appointing Commissioners to hear and determine these appeals, cannot be taken away by implication or by general words in an Act of Parliament. The Statute 25 Hen. 8, cap. 19, sect. 4, which gave the appeal from the Archbishop's Court to the King, in his chancery, directs that upon every such appeal a commission shall be directed under the Great Seal, to such persons as shall be named by the King, his heirs, successors, *like as in case of appeal from the Admiral's Court*, to hear and definitively determine such appeals, and that their decree should be definitive, hearing prize appeals from the Plantations, from 1708 to this time; not one of those appeals having been determined by His Majesty personally, or by virtue of any previous order of reference from the King,

<sup>1</sup> Register of the Lords Commissioners, No 6. f. 412. 420. *et alibi*.

Judge, and President of the High Court of Admiralty of England, on the part and behalf of our Sovereign Lady the Queen, against

and no further appeals should be had or made from the said Commissioners for the same, yet it hath been held that the King after such a definitive sentence may grant a Commission of Review.<sup>1</sup>

By the Statute, 8 Eliz., cap. 5, it is enacted, that all and every judgment and sentence definitive as shall be given or pronounced in any *civil and marine cause*, upon appeal lawfully to be made therein to the Queen, in her Court of Chancery, such commissioners or delegates as should be appointed by Her Majesty, her heirs, and successors, shall be final, and no farther appeal to be had or made from the judgment or sentence definitive, or from the said commissioners or delegates for or in the same, any law, usage, or custom, to the contrary notwithstanding. And yet it hath been held that this Statute doth not take away the King's prerogative of granting a Commission of review, and there are instances of Commissions of review, granted since this Act of Parliament in civil and marine causes. In the year 1692, there was a remarkable commission of this kind, in which Lord Chief Justice Holt acted as a Commissioner, and reversed a sentence given by the Lords of the Council, as Lords Commissioners of Prizes.<sup>2</sup> At the time this Act of the 6th of Queen Anne was passed, all appeals from the Court of Admiralty here were allowed and determined by Commissioners appointed by the Queen and not by the Queen personally; and the Act directing that these Plantation appeals should be allowed in like manner as appeals to Her

Majesty were then allowed from the Court of Admiralty within this Kingdom; it follows the legislature intended that these Plantation appeals should be determined in the same manner, that is, by Commissioners delegates.

If there had appeared any reason to question the authority of this commission in the rise or original of it, yet we apprehended a usage for above twenty years ever since the making the Act of Parliament will be sufficient to support it. The course of Courts of Justice is the law of those Courts, and a part of the law of the land, and it has been held to be so in cases where if it was not for the regard the law has for precedents or usage, such course of proceeding would be against the rule of the Common Law or against an Act of Parliament.

In the case of the Queen and the bailiffs of *Bewdley, Michaelmas*, the second year of Queen Anne, all the judges of England held a writ, varying in the most material point of it, from the express directions of an Act of Parliament, to be good, because it was agreeable to the precedents from the time the Act had been made, which in that case was only seven years, and because to have made a contrary determination would have been to shake many judgments. The law allows such weight to argument *ab inconvenienti*, that is grown into a maxim, *better a mischief than an inconvenience*. In the present case, should the objection made to this Commission prevail, it will, in effect, overturn all the judgments that have been given by the Lords Commissioners for

<sup>1</sup> Co. 4 Inst. 341.

<sup>2</sup> Register of Lords Commissioners of Prizes, No. 2. f. 146. 53 b. to 55 a.

Their Lordships pronounced for their jurisdiction.

the ship or vessel "Leucade," whereof Spirdion Arronis was master, taken and seized by Her Majesty's ship of war "Firebrand," Hyde Parker, Esquire, commander (since deceased), and also against Alexander Stamatopoulos, of the Ionian island of Santa Maura, merchant, claimant of the vessel and cargo, that on the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the aforesaid Judge did admit the claim of the said Alexander Stamatopoulos for the vessel and cargo, and by interlocutory decree, having the force and effect of a definitive sentence in writing, restore the same to the said claimant, for the use of the owners and proprietors thereof, against right and justice, acting in all things nully and unjustly, as well by virtue of his pretended office, as at the unjust instance, instigation, solicitation, procurement, or petition of the said Alexander Stamatopoulos, or his Proctor, to the very great detriment and prejudice of our Sovereign Lady the Queen. Whereupon I, the said Francis Hart Dyke, Esquire, Her Majesty's Procurator General, looking upon and believing our Sovereign Lady the Queen to be very much injured and aggrieved by all and singular the nullities, iniquities, injustices, grievances, and errors in the proceedings aforementioned, and justly fearing that Her Majesty may be further injured and aggrieved thereby, do, by this present writing, appeal from them and every of them, and more especially from the said Judge having decreed the said vessel and cargo to be restored to the said Alexander Stamatopoulos, for the use of owners and proprietors thereof, and from everything following and arising thereupon, to the Judicial Committee of Her Majesty's Most Honourable Privy Council; and do equally alike principally complain of them and every of them. And I do hereby three times severally and most earnestly pray letters dismissory to be made out and delivered to me or my party. And, lastly, I do hereby reserve to myself power to correct and reform this my appeal and complaint, by adding thereto or subtracting therefrom, and reducing the same into a better and more convenient form, and also to intimate the same to every person to whom by law I ought, as the law shall require and counsel advise, at time and place convenient, according to law, style, and custom. Upon all and singular which premises the said Francis Hart Dyke, Her Majesty's Procurator

but by their Lordships purely, under the authority of one or other of the said commissions. The confusion this would create is obvious, and therefore whatever, might have been the rule, were it a new case, it is hoped the authority of the Commission shall not at this time be

called in question, but that your Lordships will proceed to a final hearing and determination of the said appeal by virtue of your said Commission.

WILL. STRAHAN.  
J. STRANGE.

General aforesaid, desired and required me, the Notary Public hereunder written, to draw up from thence for him one or more public instrument or instruments, and the witnesses subscribed to attest the same.

This appeal was interposed on Thursday, the twenty-fourth day of May, one thousand eight hundred and fifty-five, in the Common Hall of Doctors' Commons, London, by the said Francis Hart Dyke, Esquire, who then and there appealed, protested, and prayed letters diamissory, and all things as in the above-written appeal is contained, there being then and there present with me the Notary aforesaid, Charles Tebbs, also Notary Public, specially desired to testify the same.

Which I attest,

EDWARD F. JENNER,

Not. Pub.

Witness,

CHARLES TEBBS,

Not. Pub.

*Petition of Appeal.*

In the Privy Council.

From the High Court of Admiralty of England.

Johannes Gronsund, of No. 2. John-street, Minories, in the City of London, ship-agent (one of the partners in the house of trade known by the style or firm of Messieurs Litchfield and Gronsund, ship-agents), the claimant of the schooner or vessel "Union" (whereof Jacob Friedrich von Barm was master), her tackle, apparel, and furniture, and cargo laden therein, and the freight, captured by Her Majesty's ship-of-war "Cruizer," the Honourable George Henry Douglas, commander,

} Appellant.

against

The said Honourable George Henry Douglas and Francis Hart Dyke, Esquire, Her Majesty's Procurator General in special and all others in general

} Respondents.

Schooner "Union," Jacob Friedrich von Barm, master.

To the Queen's Most Excellent Majesty in Council.

The humble petition of William Rothery, of Doctors' Commons,

Proctor of the above-named Johannes Gronsund, the claimant of the schooner or vessel "Union," her cargo and freight,

Showeth,

That in a certain cause or business of prize which was moved and prosecuted before the Right Honourable Stephen Lushington, Doctor of Laws, the Judge of the High Court of Admiralty of England, by and on the part and behalf of Your Majesty against the schooner or vessel "Union," her tackle, apparel, and furniture, cargo and freight, captured by Your Majesty's ship-of-war "Cruizer," the Honourable George Henry Douglas commander, and against Johannes Gronsund, of No. 2. John-street, Minorities, in the City of London, ship-agent (one of the partners in the house of trade known by the style or firm of Messieurs Litchfield and Gronsund, ship-agents), the claimant of the said schooner or vessel "Union," her cargo and freight, intervening and against all persons in general having or pretending to have any right, title, or interest therein, the said Judge did, on the third day of the month of February, in the present year one thousand eight hundred and fifty-five, reject the claims of the said Johannes Gronsund, and did pronounce the said schooner or vessel "Union" and cargo to have belonged at the time of the capture thereof to enemies of the Crown of Great Britain, and as such or otherwise subject and liable to confiscation, and did condemn the same as good and lawful prize captured by Your Majesty's ship-of-war "Cruizer," the Honourable George Henry Douglas commander, and direct the said schooner or vessel and cargo to be appraised and sold; from which sentence an appeal hath been duly entered on behalf of the said Johannes Gronsund and lodged in the registry of the High Courts of Admiralty and Appeals.

Wherefore your petitioner humbly prays that Your Majesty will be graciously pleased to refer this petition and the said appeal to this Judicial Committee of the Privy Council.

ROTHERY.

Doctors' Commons, 30th April, 1855.

#### *Inhibition and Citation.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to all and singular our liege subjects being literate persons whomsoever and wheresoever in and throughout our said United Kingdom, and especially to Edward Goodall our officer lawfully appointed, greeting. Whereas a certain cause or business of prize promoted and brought on our behalf against the schooner or vessel "Franciska" (whereof



lately was master), her tackle, apparel, and furniture, and the goods, wares, and merchandises laden therein, captured by our ship-of-war "Cruizer" (the Honourable George Henry Douglas commander), and against Henry Sharpe, of No. 26. Broad-street-buildings, in our City of London, merchant (one of the partners in the firm of Messrs. Henry and Daniel Sharpe of the same place, merchants), the claimant of, and intervening so far as regards certain wine and salt laden on board the said schooner or vessel (as specified in the schedule annexed to his claim), was lately depending in judgment before the Right Honourable Stephen Lushington, Doctor of Laws, Lieutenant, Judge, and President of the High Court of our Admiralty of England; and whereas the said Right Honourable Stephen Lushington, Doctor of Laws, did, on the seventh day of March last, by his interlocutory decree or sentence, pronounce the said cargo to have belonged at the time of the seizure thereof to enemies of our crown and condemn the same as good and lawful prize captured by our said ship-of-war "Cruizer," the Honourable George Henry Douglas commander, and direct that the same should be appraised and sold; from which said decree or sentence an appeal hath been interposed on behalf of the said Henry Sharpe to us in council; and whereas an appeal and a petition of appeal to us of the Proctor of the said Henry Sharpe having been duly lodged in the Registry of our High Court of Appeals, and the said petition having been transmitted to and lodged with the Clerk of our Council, the said appeal stands referred by us to the Judicial Committee of our Privy Council, under and by virtue of the Act of Parliament made and passed in the seventeenth year of our reign, chapter eighteen, and our Order in Council of the fourteenth day of November last; and whereas the worshipful John George Middleton, Doctor of Laws, one of the Surrogates of the said Judicial Committee lawfully appointed, hath decreed an inhibition and citation to the effect following (justice so requiring), we do therefore authorise and empower and strictly charge and command you, jointly and severally, that you inhibit or cause to be inhibited the said Right Honourable Stephen Lushington, Doctor of Laws, the Judge from whom the said cause is appealed, his Surrogate, and his Registrar or Actuary, and the said Honourable George Henry Douglas, and also Francis Hart Dyke, Esquire, our Procurator General in special and all others in general, whom by the tenor of the presents we do inhibit, that they nor either of them, pending the said appeal, do not nor attempt anything to the prejudice of the said party appellant or his cause of appeal, but that he may have full liberty and power to proceed in and prosecute the same so long as it shall remain undecided, under pain of the law and contempt thereof; and that you also cite or cause to be cited the said Honourable George Henry Douglas and Francis Hart Dyke, Esquire,

that they appear before the said Judicial Committee or any three or more of them, in the Privy Council Chamber, Whitehall, on the sixth day after service of these presents if it be a Court day, otherwise before their lordships' Surrogate in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, on the next Court held there between the usual hours of hearing causes, there to answer unto the said Henry Sharpe in the said cause of appeal, and further to do and receive in this behalf as unto law and justice shall appertain, under pain of the law and contempt thereof, and that you duly certify what you shall do or cause to be done in the premises to the Judicial Committee aforesaid, or any three or more of them, or their Surrogate, together with these presents. Given at London, under the seal which we use in this behalf, the tenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, and of our reign the eighteenth.

H. C. ROTHERY,  
H. M.'s Registrar.

Inhibition, &c. (Appeal of Sharpe.)

ROTHERY.

(Seal.)

H. G. M. B.

*Return of Service.*

I certify that this inhibition was duly executed the sixteenth day of May, One thousand eight hundred and fifty-five, on Henry Cadogan Rothery, Esquire, the Registrar of the High Court of Admiralty, by showing to him this original inhibition under seal, and by leaving with him a true copy thereof; also upon Francis Hart Dyke, Esquire, Her Majesty's Procurator-General, the Proctor of the within-named the Honourable George Henry Douglas, by also showing to him this original inhibition under seal, and by leaving with him a true copy thereof, who accepted the service thereof on behalf of the within-named, the Honourable George Henry Douglas.

By me,

EDWARD GOODALL.

*Libel of Appeal.*

In the name of God, amen. Before you, the Judicial Committee of Her Majesty's Most Honourable Privy Council, to whom the appeal and complaint hereinafter mentioned stands referred. Francis Hart Dyke, Esquire, Her Majesty's Procurator General, on behalf of our Sovereign Lady the Queen, against Alexander Stamatopoulos,

claimant of the ship or vessel "Leucade," whereof Spirdion Arronis was master, and the cargo laden therein, as the property of himself and Peter Stamatopoulos, both of Santa Maura, and Ionian subjects, and against any other person or persons lawfully intervening or appearing in judgment before you in this behalf, doth say, allege, and in law articulately propound as follows, to wit: —

First. That a certain cause so prize was lately depending before the Right Honourable Stephen Lushington, Doctor of Laws, Lieutenant, Judge, and President of the High Court of Admiralty of England, on the part and behalf of our Sovereign Lady the Queen, against the ship or vessel "Leucade," whereof Spirdion Arronis was master, taken and seized by Her Majesty's ship "Firebrand," Hyde Parker, Esquire, commander (since deceased); and also against Alexander Stamatopoulos, of the Ionian island of Santa Maura, merchant, claimant of the said vessel and cargo; and against all persons in general having or pretending to have any right, title, or interest therein; and this was and is true, public, and notorious; and the party proponent doth allege and propound everything in this and the subsequent articles of this libel contained jointly and severally.

Second. That the said Right Honourable Stephen Lushington, Doctor of Laws, the Judge aforesaid, unduly and unjustly proceeding in the said cause, and (saving all reverence due to him) too much favouring the said Alexander Stamatopoulos more than by law he ought, and not in the least regarding the requisite and just forms of law and judicial proceedings, did, in fact, though unduly, on the nineteenth day of May, in the year of our Lord One thousand eight hundred and fifty-five, admit the claim of the said Alexander Stamatopoulos for the vessel and cargo, and, by interlocutory decree, having the force and effect of a definitive sentence, in writing, restore the said ship and cargo to the said claimant, for the use of the owners and proprietors thereof, against right and justice, acting in all things null and unjustly, as well by virtue of his pretended office as at the unjust instance, instigation, solicitation, procurement, or petition of the said Alexander Stamatopoulos, or his Proctor, to the very great detriment and prejudice of our Sovereign Lady the Queen. And this was and is true, public, and notorious; and the party proponent doth allege and propound as before.

Third. That the said Francis Hart Dyke, Esquire, Her Majesty's Procurator General, conceiving Her Majesty to be very much injured and aggrieved by all and singular the grievances, nullities, iniquities, injuries, and errors in the proceeding before mentioned, and justly fearing that Her Majesty may be further injured and aggrieved thereby, hath rightly and duly appealed from them and every of them, and more especially from the said Judge having, on the said nineteenth day of May, One thousand eight hundred and fifty-five, by his interlocutory decree, having the force and effect of a defini-

tive sentence, in writing, restored the said ship and cargo to the said Alexander Stamatopoulos, for the use of the owners and proprietors thereof, and from all and singular the other nullities, iniquities, injustices, injuries, grievances, and errors in the proceedings before mentioned, to be collected from the acts and facts of the said Judge, from whom the said cause is appealed to Her Most Excellent Majesty in Council, and hath equally and alike complained of them, and every of them; and this was and is true, public, and notorious. And the party proponent doth allege and propound as before.

Fourth. That our Sovereign Lady the Queen hath referred the final hearing of this cause of appeal and complaint, with all its incidents, emergents, dependents, and things adjoined thereto and connected therewith, to you the Right Honourable the Judicial Committee of Her Majesty's Privy Council. And this was and is true; and the party proponent doth allege and propound as before.

Fifth. That this cause or business of appeal and complaint of nullity was and is rightly and duly appealed to Her Most Excellent Majesty the Queen, and to you the Most Noble and Right Honourable the Judicial Committee of Her Majesty's Privy Council, and therefore and by reason of the premises the said Alexander Stamatopoulos was and is subject to the jurisdiction of this Court; and this was and is true, public, and notorious; and the party proponent doth allege and propound as before.

Sixth. That an inhibition issued under seal of this Court, whereby the said Right Honourable Stephen Lushington, Doctor of Laws, the Judge from whom this cause is appealed, his Surrogate and Registrar or Actuary, and also the said Alexander Stamatopoulos in special and all others in general who ought by law to be inhibited, were and are inhibited from doing or attempting anything to the prejudice of Our Sovereign Lady the Queen, or of this cause of appeal and complaint of nullity, or of Her Majesty's jurisdiction pending this cause or business of appeal and complaint of nullity, and so long as the same shall remain undecided before you the most noble and right honourable persons to whom the said cause was and is duly appealed; and this was, and is true, public, and notorious; and the party proponent doth allege and propound as before.

Seventh. That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, und report, of which legal proof being made, the party proponent prays right and justice to be effectually done and administered in the premises.

J. D. HARDING.

*Exemplification of the Decree of Desertion of Appeal.*

GEORGE THE THIRD, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of Faith. To all and singular persons of whatsoever dignity, degree, state, or pre-eminence they be, to whom these present letters testimonial shall come, greeting. We do by these presents make known and signify unto you that, upon examining the records of our High Court of Appeal for Prizes, faithfully kept by our beloved the Right Honourable *Charles George Lord Arden*, the principal Registrar of our said Court, we do find a certain interlocutory decree, made and interposed in our aforesaid Court, of the tenor, in the words following : —

Friday, the 25th day of November, in the year of our Lord 1814,  
at the Council Chamber, Whitehall,

## Present

The Right Honourable

Sir William Grant, Knight, Master of the Rolls,

Sir William Scott, Knight,

Sir John Nicholl, Knight,

## In the presence of

James Farquhar, one of the Deputy Registrars.

" Paul Hamilton," Joseph Betsworth Blunt, master.

The said Joseph Betsworth Blunt, the claimant of the said  
ship and cargo,

against

Edward Lloyd Graham, Esquire, Commander of His  
Majesty's ship " Alcmena " the captor.

Rice exhibited a petition, with a process under seal of the Vice Admiralty Court of the island of Malta, and alleged that a certain cause or business of prize was lately moved and prosecuted in the said Court against the said ship " Paul Hamilton " (whereof Joseph Betsworth Blunt was master), her tackle, apparel, and furniture, seized and taken as prize by His Majesty's ship " Alcmena," Edward Lloyd Graham, Esquire, Commander, and carried to the island of Malta ; that on the 19th day of February, 1812, a claim of the said Joseph Betsworth Blunt was given in the said Court for the said ship, as the property of James Sanderson of Alexandria, in the district of Columbia, and of John Taylor of Washington, respectively citizens of the United States of America, and also as protected under and by virtue of a certain pass or licence granted by Henry Stamford Blakeney, Esquire, His Britannic Majesty's Consul at

Algiers ; that on the 26th day of the said month of February the said cause came on for hearing in the said Vice Admiralty Court, when the Judge was pleased to admit the aforesaid claim, but directed further proof to be made to show that Mr. Blakeney at Algiers was permitted to grant a licence for the vessel to go to Marseilles, contrary to His Majesty's Order in Council, the 26th of April ; that further proof was accordingly exhibited, and on the 12th day of August, in the year 1812, the cause again came on for hearing in the said Court, when the Judge was pleased to pronounce the further proof to be sufficient, and decreed the said ship to be restored to the said claimant on payment of the captor's expenses ; that an appeal was asserted on the part of the said captor from so much of the said sentence as restored the said ship, but the same has not been prosecuted in this Court, and more than the time allowed by law for prosecuting the same having elapsed ; wherefore the said Rice prayed, and the Lords having heard counsel thereon, pronounced, decreed, and declared the said appeal to be deserted, and gave power to the Judge below to proceed to execute his sentence notwithstanding the appeal, but strictly inhibiting the said Judge from receiving or sustaining any proceedings in respect to any bond which may have been obtained by the authority of the said Court from the said appellant to prosecute the said appeal, and directed the said Judge to deliver up the said bond (if any) to the said appellant or his sureties, to be cancelled.

All and singular which premises, as they have been drawn and passed in our aforesaid Court, so we have thought fit that the same should be exemplified unto you ; and we do attest that the same do agree, having been faithfully compared with their originals remaining on record in our Court aforesaid. In witness whereof, we have caused the great seal of our said High Court of *Delegates* to be hereunto affixed.

Given at London, in our aforesaid Court, the 1st day of December, in the year of our Lord 1814, and of our reign the fifty-fifth.

(L. S.)

ARDEN, Registrar.

*Decree — reversing the Sentence.*

30th November, 1855.

On *Friday*, the *thirtieth* day of *November*, 1855,

Before the Right Honourable the Judicial Committee of Her Majesty's most Honourable Privy Council, at the Council Chamber, Whitehall,

Present—

The Right Honourable

Sir John Dodson, Knight,  
 Thomas Pemberton Leigh,  
 Sir Edward Ryan, Knight,  
 Sir John Patteson, Knight,  
 Sir William Henry Maule, Knight.

In the presence of

H. C. Rothery, H. M.'s Registrar.

NORTHCOTE *against* DOUGLAS and DYKE } For Judgment.  
 (Schooner "*Franciska*," and Freight)

DYKE.

*Deacon* prayed that their Lordships would be pleased to report to Her Majesty their opinion in favour of the appeal and complaint made and interposed in this cause, that the decree or sentence appealed from ought to be reversed and the principal cause retained, and therein, that the restitution of the ship or vessel "*Franciska*" and her freight ought to be pronounced for; and he further prayed their Lordships to condemn the Honourable George Henry Douglas, the commander of Her Majesty's ship of war "*Cruizer*," captor of the said ship, in the costs incurred, on behalf of Charles Northcote, his (*Deacon's*) party, the appellant, as well in this Court as in the Court below.

*Dyke* prayed that their Lordships would be pleased to report to Her Majesty their opinion against the said appeal and complaint, that the decree and sentence appealed from ought to be affirmed, and the cause remitted, with all its incidents save the costs incurred in this appeal, to the Judge from whom the same was appealed. And he further prayed their Lordships to condemn *Deacon's* party (the appellant) in such costs.

The Lords of the Committee having read the proceedings and evidence transmitted from the Court below, and having maturely deliberated, were pleased to agree to report to Her Majesty their opinion in favour of the said appeal and complaint, that the decree or sentence appealed from ought to be reversed, and the principal cause retained, and therein that the said ship or vessel "*Franciska*" ought to be restored, or the proceeds arising from the sale thereof paid, together with the said freight, to the said Charles Northcote, the claimant; but their Lordships made no order as to costs.

*Decree affirming Sentence and remitting Cause.*

30. November, 1855.

*Tottie against Heathcote and Dyke*  
 (Ship "*Johanna Maria*," and Cargo) } For Judgment.

*Rothery.**Dyke.*

*Rothery* prayed that their Lordships would be pleased to report to Her Majesty their opinion in favour of the appeal and complaint made and interposed in this cause, that the decree or sentence appealed from ought to be reversed, and the principal cause retained, and therein that the ship or vessel "*Johanna Maria*" and her cargo ought to be decreed to be restored, or the value thereof paid to the owner, and that all losses, costs, charges, damages, demurrages, and expenses sustained by the owner of the said ship and cargo, by reason of the capture and detention thereof by Her Majesty's ship of war "*Archer*," Edmund Heathcote, Esquire, commander, ought to be pronounced, and for the said *Edmund Heathcote* condemned therein. And he further prayed their Lordships to condemn the said *Edmund Heathcote* in the costs incurred on behalf of Charles Tottie, his (*Rothery's*) party, the appellant, as well in this Court as in the Court below.

*Dyke* prayed that their Lordships would be pleased to report to Her Majesty their opinion against the said appeal and complaint, that the decree or sentence appealed from ought to be affirmed, and the cause remitted with all its incidents, save the costs incurred in this appeal to the Judge from whom the same was appealed. And he further prayed their Lordships to condemn *Rothery's* party, the appellant, in such costs.

The Lords of the Committee having read the proceedings and evidence transmitted from the Court below, and having maturely deliberated, were pleased to agree to report to Her Majesty their opinion against the said appeal and complaint, that the decree or sentence appealed from ought to be affirmed, and the cause remitted, with all its incidents, to the Judge of the Court from which the same was appealed, but their Lordships made no order as to costs.

*Bill of Sale by Marshal of Admiralty.*

Know all men, by these presents, that I, *Evan Jones*, Marshal of the High Court of Admiralty of *England*, in obedience to and by virtue of a decree, to me directed, under the seal of the said Court, bearing date the *eighth* day of *December*, 1855, for and in considera-



tion of the sum of *eight hundred and sixty* pounds of lawful money of *Great Britain*, to me in hand, at or before the ensealing and delivery of these presents, being the highest sum bid at a public sale, held on the *twenty-first* day of *December*, 1855, by D. N., of *Wakefield*, in the county of *Yorkshire*, master mariner, well and truly paid, the receipt whereof I do hereby acknowledge and agree to be therewith fully satisfied, have granted, bargained, sold, assigned, and set over; and, by these presents, *do* fully, freely, and absolutely grant, bargain, sell, assign, and set over, unto the said D. N., his executors, administrators, and assigns, *sixty-four* *sixty-fourth* parts or shares, being the entirety of the foreign ship or vessel called the "*Jeune Nanette*," now lying in the St. Katherine Dock, whereof master; together with all and singular the masts, sails, sail yards, anchors, cables, ropes, cords, guns, gunpowder, ammunition, small arms, tackle, apparel, boats, oars, and appurtenances whatsoever, now on board, or described as belonging to the said ship or vessel, to have and hold the said ship or vessel called the "*Jeune Nanette*," and all other the above bargained premises, unto the said D. N., his executors, administrators, and assigns, to his and their own use and uses, and as his and their own proper goods and chattels from henceforth for ever. And I, the said *Evan Jones*, Marshal of the said High Court of Admiralty, do hereby covenant, promise, and agree, to and with the said D. N., his executors, administrators, and assigns, in manner following: That is to say, that at the time of ensealing and delivery hereof, I have, in and by the decree aforesaid, good right, full power, and lawful authority to grant, bargain, sell, assign, and set over the said hereby bargained premises unto the said D. N., his executors, administrators, and assigns, in manner and form aforesaid. And that the said hereby bargained premises, and every part thereof, now are, and so from henceforth for ever shall be, remain, and continue unto the said D. N., his executors, administrators, and assigns.

In witness whereof I have hereunto set my hand and seal, the *tenth* day of *January*, in the year of our Lord *One thousand eight hundred and fifty-six*.

Signed, sealed, and delivered,  
in presence of

E. JONES,  
Marshal of the Admiralty.

A. B.

Received, on the day and year above written, of the above-named D. N., the sum of eight hundred and sixty pounds, being the consideration hereinbefore mentioned. } £860.

Witness,  
A. B.

E. JONES.

## APPENDIX D.

THE Foreign Enlistment Act, the 59. Geo. 3. c. 69., was passed with reference to the revolt of the South American Spanish colonies from the mother-country.

In the year 1814, a treaty of peace was concluded between Great Britain and Spain, by the third additional article of which it was stipulated that the King of Great Britain should adopt the most efficacious means of preventing his subjects from furnishing arms; ammunition, or any other article whatever of war, to the insurgents in America.

By former Acts of Parliament, particularly the 9. Geo. 2. c. 30. and 29. Geo. 2. c. 17., provision had been made against the enlistment of British subjects in the service of foreign states, but which was not applicable to the case included in the treaty, that of colonies in revolt.

The 59. Geo. 3. c. 60. was therefore passed to supply the defects of the former state of the law, and to prevent the enlistment of British subjects into the service of unacknowledged as well as acknowledged states.

For this purpose, after the words "in the service of any foreign prince, state, potentate," the words, "colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people," were inserted.

On the passing of the bill through Parliament, a very interesting debate occurred, of which full details will be found in the 40th vol. of Hansard's Parliamentary Debates.

In the month of April 1823 an attempt was made to repeal this act, when the subject was again fully debated, and the proposition rejected.

This act therefore contains the present law of this country with reference to the interference of its subjects in foreign wars.

## 59 Geo. 3. c. 69.

*An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping, in His Majesty's Dominions, Vessels for Warlike Purposes, without His Majesty's Licence. — 3rd July 1819.*

WHEREAS the enlistment or engagement of His Majesty's subjects to serve in war in foreign service, without His Majesty's licence, and the fitting out and equipping and arming of vessels by His Majesty's

- subjects without His Majesty's licence, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, an act passed in the ninth year of the reign of His late Majesty King George the Second, intituled "An Act to prevent the listing His Majesty's Subjects to serve as Soldiers without His Majesty's Licence;" and also an act passed in the twenty-ninth year of the reign of His said late Majesty King George the Second, intituled "An Act to prevent His Majesty's Subjects from serving as Officers under the French King; and for better enforcing an Act passed in the Ninth Year of His present Majesty's Reign, to prevent the enlisting His Majesty's Subjects to serve as Soldiers without His Majesty's Licence; and for obliging such of His Majesty's Subjects as shall accept Commissions in the Scotch Brigade in the Service of the States General of the United Provinces, to take the Oaths of Allegiance and Abjuration;" and also an act passed in Ireland in the eleventh year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing the Enlisting of His Majesty's Subjects to serve as Soldiers in Foreign Service without His Majesty's Licence;" and also an act passed in Ireland in the nineteenth year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing His Majesty's Subjects from entering into Foreign Service, and for publishing an Act of the Seventh Year of King William the Third, intituled 'An Act to prevent Foreign Education;'" and all and every the clauses and provisions in the said several acts contained, shall be and the same are hereby repealed.
- II. And be it further declared and enacted, that if any natural born subject of His Majesty, his heirs and successors, without the leave or licence of His Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of His Majesty, his heirs or successors, or signified by Order in Council, or by proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be
9. Geo. 2. c. 30.
29. Geo. 2. c. 17.
- Irish Act,  
11. Geo. 2.
- Irish Act,  
19. Geo. 2.
- Recited acts repealed.  
Subjects enlisting or engaging to enlist or serve in foreign service, military or naval, guilty of misdemeanor.

employed or shall serve in any warlike or military operation, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural born subject of His Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve, in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government

All persons retaining or procuring others to enlist, guilty of the like offence.

as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received or not; in any or either of such cases every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

Act not to  
extend to  
persons en-  
listed or serv-  
ing before  
the times  
herein spe-  
cified.

III. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to render any person or persons liable to any punishment or penalty under this act, who at any time before the first day of August One thousand eight hundred and nineteen, within any part of the United Kingdom, or of the islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November One thousand eight hundred and nineteen, in any part or place out of the United Kingdom, or of the said islands, shall have taken or accepted, or agreed to take or accept, any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served shall, after the said first day of August One thousand eight hundred and nineteen, continue to serve in any warlike or military operation, either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept, any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor, or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said first day of August, continue to serve in and on board any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said first day of August, continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom or the islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said first day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said first day of November, or who shall, before the passing of this act, and within the said United Kingdom, or the said islands, or before the first day of November

One thousand eight hundred and nineteen, in any port or place out of the said United Kingdom, or the said islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any person or persons whatever, to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed, contrary to the prohibitions respectively in this act contained, anything in this act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this act, and as such person or persons would have been in, and been liable and subject to, in case this act and the said recited acts by this act repealed had not been passed or made.

IV. And be it further enacted, that it shall and may be lawful for any justice of the peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offence made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail to the satisfaction of the said justice to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and that all such offences which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of Oyer and Terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and that all such offences which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's Court of King's Bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of Oyer and Terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and all such offences as shall be committed in Scotland, shall and may be prosecuted in the Court

Justices to  
issue war-  
rants for the  
apprehen-  
sion of  
offenders.

Where  
offences shall  
be tried.

of Justiciary in Scotland, or any other court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this act as a misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any justice of the peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the superior court competent to try and having jurisdiction to try criminal offences committed in such port or place; and all such offences committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any superior court of His Majesty's dominions competent to try and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

Vessels with persons on board engaged in foreign service, may be detained at any port in His Majesty's dominions.

V. And be it further enacted, that in case any ship or vessel in any port or place within His Majesty's dominions shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter to serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of His Majesty's customs where any such officers of the customs shall be, and in any part of His Majesty's dominions in which there are no officers of His Majesty's customs, for any governor or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorised and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: Provided nevertheless, that no principal officer, governor, or person shall act as aforesaid, upon such information upon oath as aforesaid,

unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter to serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving or being engaged or employed in such service as aforesaid, but shall also have set forth in such information upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury.

Oath to be made as to facts and circumstances.

VI. And be it further enacted, that if any master or other person having or taking the charge or command of any ship or vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter to serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving or being engaged or employed in any naval or military service, contrary to the provisions of this act, such master or owner or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and moreover every such ship or vessel, so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognisance before one of His Majesty's justices of the peace, for the payment of such penalty or penalties.

Penalty on masters of ships, &c., taking on board persons enlisted contrary to this act, 50*l*. for each person.

VII. And be it further enacted, that if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with

Penalty on persons fitting out armed vessels to aid in military operations with any foreign powers without licence;



or issuing  
commissions  
for ships.

intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, inland, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise, and the officers of His Majesty's navy, are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

Penalty for  
aiding the  
warlike  
equipment  
of vessels  
of foreign  
states, &c.

VIII. And be it further enacted, that if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of

any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruizer or other armed vessel which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruizer, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

IX. And be it further enacted, that offences made punishable by the provisions of this act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster in the county of Middlesex.

X. And be it further enacted, that any penalty or forfeiture inflicted by this act may be prosecuted, sued for, and recovered, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of His Majesty's Attorney General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to His Majesty, his heirs or successors, and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. And be it further enacted, that if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for anything done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by

Offences committed out of the kingdom may be tried at Westminster.

How penalties shall be sued for and recovered.

Double costs.  
Limitation of actions.

Former rules established by law to be applied to actions commenced in pursuance of this act.

any officer of customs or excise, or by any officer of His Majesty's navy, under any Act of Parliament in force on or immediately before the passing of this act, for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for anything done in pursuance of this act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this act.

Penalties not  
to extend to  
persons en-  
tering into  
military ser-  
vice in Asia.

XII. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend, to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in Asia, with leave or licence, signified in the usual manner, from the Governor General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such Governor General or Vice-President in Council.

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(*London Gazette, May 14, 1861.*)

BY THE QUEEN. — A PROCLAMATION.

VICTORIA R.

WHEREAS we are happily at peace with all sovereigns, powers, and states :

And whereas hostilities have unhappily commenced between the government of the United States of America and certain States styling themselves the Confederate States of America :

And whereas we, being at peace with the government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties :

We, therefore, have thought fit, by and with the advice of our Privy Council, to issue this our royal proclamation :

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril :

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the Third, intituled "An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in a Foreign Service, and the fitting out or equipping, in His Majesty's Dominions, Vessels for Warlike Purposes, without His Majesty's Licence," it is, amongst other things, declared and enacted as follows :

"That if any natural-born subject of His Majesty, his heirs and successors, without the leave or licence of His Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of His Majesty, his heirs or successors, or signified by Order in Council, or by proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or licence as aforesaid, accept or agree to take or accept any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out or equipped, or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be, in any or either of the cases aforesaid, actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions

elsewhere, or in any country, colony, settlement, island, or place, belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

And it is in and by the said act further enacted : —

" That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruize or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or

indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

And it is in and by the said act further enacted:—

"That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country, under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

Now, in order that none of our subjects may unwarily render

themselves liable to the penalties imposed by the said statute, we do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign, in the said contest, or in violation or contravention of the law of nations in that behalf; as for example and more especially by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines, on board any ship or vessel of war or transport, of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines, on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport, by either of the said contending parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute, or by the law of nations, in that behalf imposed or denounced.

And we do hereby declare that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at the White Lodge, Richmond Park, this thirteenth day of May, in the year of our Lord One thousand eight hundred and sixty-one, and in the twenty-fourth year of our reign.

God save the Queen.

(*Moniteur, Paris, June 11, 1861.*)

PARTIE OFFICIELLE.

Paris, le 10 juin.

Le ministre des affaires étrangères a soumis à l'Empereur la déclaration suivante, que Sa Majesté a revêtue de son approbation :

DÉCLARATION.

Sa Majesté l'Empereur des Français, prenant en considération l'état de paix qui existe entre la France et les Etats-Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le gouvernement de l'Union et les Etats qui prétendent former une confédération particulière.

En conséquence, Sa Majesté, vu l'article 14 de l'ordonnance de la marine du mois d'août 1681, l'article 3 de la loi du 10 avril 1825, les articles 84 et 85 du code pénal, 65 et suivants du décret du 24 mars 1852, 313 et suivants du code pénal maritime, et l'article 21 du code Napoléon,

Déclare :

1° Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de 24 heures, hors le cas de relâche forcée ;

2° Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nosdits ports ou rades ;

3° Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des deux parties ;

4° Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérants :

5° Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'Empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommandations contenues dans la présente déclaration seront poursuivis, s'il y a lieu, confor-



mément aux dispositions de la loi du 10 avril 1825, et aux articles 84 et 85 du code pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire auxdits contrevenants des dispositions de l'article 21 du code Napoléon, et des articles 65 et suivants du décret du 24 mars 1852 sur la marine marchande, 313 et suivants du code pénal pour l'armée de mer.

Sa Majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.

NAPOLÉON.

*Le ministre des affaires  
étrangères,*

E. THOUVENEL.

# INDEX.

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## A.

**ACT AND INTENTION,**  
must be united (*Lisette*, 6 Rob. 391. n.).

**ACT OF COURT,**  
claim, 29. 138.

**ACTUAL DELICTUM, 82.**

**ADHESION**  
to appeal (*De Klein David*, 26th Oct., 1748, p. 179.; *L'Industrie*,  
14th May, 1814.).

**ADVOCATE OF ADMIRALTY, 34.**

**AFFIDAVIT,**  
claim 284 (*Abo*, Admiralty Pr. Ca., 43.).  
of one of crew not examined by captors, 77.  
destination, 53.  
identity, claimant, 37.  
ordered, not brought in, 112.  
papers—fuller, 79.  
power to claim, 79.  
property, 124. 127.  
    not evidence, 46.  
    only by consent, 124.  
    ladars, 161.  
    „ not admissible (*Juno*, 2 Rob. 122.).  
    ship timber, 42, 43.

**AGENCY,**  
*Nôtre Dame de Délivrance*, 15th Nov. 1750.

**AGENT,**

master not *a.* for cargo (*Atalanta*, 6 Rob. 462.).

master *a.* for ship (*Id.* 460.)

owner responsible for act of *a.* (*Franklin*, 6 Rob. 127.).

**AGREEMENT,**

*a.* with governor of a colony to sell contraband articles not released from condemnation (*Richmond*, 5 Rob. 336.).

**ALLEGATION,**

pleading claim, 11.

**ALLY,**

articles of prohibited nature not to be sent to enemy of country in alliance (*Richmond*, 6 Rob. 328.).

associated in war, bound to carry it out (*Caroline*, 6 Rob. 336. ; *Neptunus*, 6 Rob. 406.).

naval stores sent by an ally to the common enemy, forfeited (*Elisavere Wilhelmina*, 6 Rob. 333.).

provisions, produce of ally, of enemy, on destination to enemy's port of naval equipment, condemned (*Jonge Margaretha*, 1 Rob. 192. 194.).

any relaxation of strict belligerent right must be with consent of both (*Neptunus*, 6 Rob. 406.).

trade between ally and common enemy, subjects property to condemnation (*Naycole*, 4 Rob. 254.).

**AMBASSADOR,**

conveyance of despatches from an ambassador in a neutral country to his own government, not cause of condemnation, lviii. (*Caroline*, 6 Rob. 461.).

**AMBIGUOUS,**

as to articles of *a.* use, the fair criterion is the nature of part to which they are going (*Twende Brodre*, 4 Rob. 36.).

**AMERICA,**

treaties entered into by, respecting contraband (*Twende Brodre*, 4 Rob. 33. n. Am. ed.).

**AMSTERDAM,**

great mercantile port, as well as one of naval equipment (*Neptunus*, 3 Rob. 108.).

**ANCHORS, xli.**

contraband, 20 (*Jonge Margaretha*, 1 Rob. 195.).

**ANCIPITIS USUS,**

final use of articles, deduced from their immediate destination, 20 (*Jonge Margaretha*, 1 Rob. 195.).

**APPEAL, 293.**

## APPRAISEMENT, 2.

APTA BELLO, *per se*, 48.ASSORTED ARTICLES (*Rosalie and Betty*, 2 Rob. 348.; 6 Rob. 86.).ATTESTATION, 127. 168. *Vide AFFIDAVIT.*

## B.

BALKS, xlviii. 153.

fit for naval purposes, condemned, 155.

of ordinary usage, restored (*Twende Brodre*, 4 Rob. 36.).

BALLAST,

excused, 147.

BAY,

ports in same bay identified, xix. 32 (*Zelder Rust*, 6 Rob. 94.).not if separated by headland (*Id.*).

BEEF,

contraband, 90.

BEER, xxxiv.

formerly considered as luxury, not contraband (*Jonge Margaretha*,  
1 Rob. 190.).

small quantity not contraband, 163.

but if large quantity, contraband, 175.

BENDS, 35.

BIEL BRIEF, 107. 110.

BILL OF FREEDOM, 87.

BILL OF LADING, 34. 43. 64. 87. 132. 135.

colourable, 109. 116, 117.

no account or risk, 162.

special covenant (*Venus*, 6 Rob. 234.).agreement endorsed on not to open packages, not admissible as excuse  
for ignorance (*Oster Risoer*, 4 Rob. 200.).

BILL,

of privilege, 62.

of sale, 102. 131.

BISCUIT,

contraband, xxxv. 30. (*Ranger*, 6 Rob. 126.).

BOIS DE CONSTRUCTION,

contraband (*Maria*, 1 Rob. 373.).Danish treaty and explanatory acts (*Twende Brodre*, 4 Rob. 36.).

- BONA FIDES,**  
     necessary to entitle to privilege of pre-emption (*Sarah Christina*, 1 Rob. 241.).  
     bonâ fide ignorance no excuse for master (*Aroseemba*, 6 Rob. 435.).
- BOURDEAUX,**  
     mere mercantile port (*Apollo*, 4 Rob. 160.).
- BOURBON, ISLE OF,**  
     posts of naval equipment (*United States*, Stew. 119).
- BRANDY,**  
     condemned, xxxiii. 115. 169.
- BREAK BULK, 153.**  
     not permitted generally (*Washington*, 6 Rob. 272.).  
     only allowable in case of necessity (*L'Eole*, 6 Rob. 225.).
- BREST,**  
     port of naval equipment, 74. 108. (*Neptunus*, 3 Rob. 108. ; *Zelden Rust*, 6 Rob. 95.).
- BRIMSTONE,**  
     condemned, 25.
- BRINGING IN. Vide CAPTOR.**  
     as prize, 115.  
     cruizer may examine but not detain (*Jonge Jacobus*, 1 Rob. 242.).  
     and taking depositions justifiable (*Zachemann*, 5 Rob. 153.).  
     for more deliberate inquiry (Swedish treaty, *Maria*, 1 Rob. 374.).  
     justifiable cause (*Caroline*, 6 Rob. 470.).
- BRITISH SUBJECT,**  
     settled in enemy's country may trade with enemy, but not in contraband (*Neptunus*, 6 Rob. 408.). *Vide* p. 101.
- BUILDERS' CERTIFICATE, 165.**
- BURGHER'S BRIEF, 116.**  
     without residence of self or family, invalid (*Eleonore Wilhelmina*, 6 Rob. 333.).
- BUTTER, xxxiv.**  
     contraband, 100.

## C.

- CADIZ,**  
     port of military and mercantile equipment (*Charlotte*, 5 Rob. 314.).
- CALENDAR,**  
     change in, 1.
- CALLAMANCO, 123.**
- CANDLES,**  
     contraband, 90.

CANNON,  
concealed, 146.

CANVAS,  
contraband, 71.

**CAPTOR,**

*Costs*, — cargo protected by treaty, just cause of seizure pronounced for and costs given to captors, just cause of seizure affirmed on appeal, but sentence as to costs reversed, each party to pay their own, 98.

just cause, captor's costs refused, 129.

want of pass under Swedish Treaty justifies bringing in, captor's costs given, 89.

*Expenses*, — expense of taking depositions allowed (*Christina Maria*, 4 Rob. 166.; *Zacheman*, 5 Rob. 153.).

cargo protected by treaty, just cause of seizure pronounced for, expenses given to captor, 133.; but see p. 98.

portion of cargo condemned as contraband, just cause of seizure, captor's expenses given, 74.

character of article doubtful, justify bringing in, captor's expenses given (*Jonge Hermanus*, 4 Rob. 95. n.; *Christina Maria*, 4 Rob. 166.).

pre-emption, captor's expenses generally paid by government (*Twende Brodre*, 4 Rob. 38.).

but under circumstances claimant condemned to pay them (*Id.*).

suspicious of contraband justify seizure, captor's expenses, 153.

**CARGO,**

condemned, 90.

effect on ship, 47. 49. (but see *Ringende Jacob*, 1 Rob. 90.; *Friendship*, 6 Rob. 425.

discharge of, relieves from penalty (*Immanuel*, 2 Rob. 195.).

effect on character of ship (*Friendship*, 6 Rob. 425.; *Vrow Elizabeth*, 5 Rob. 4.).

false paper entails condemnation of contraband cargo and ship, 104.

master not agent for (*Imina*, 6 Rob. 170.; *Caroline*, 6 Rob. 462. n.).

part contraband taints ship and other parts if they belong to the same owner (*Jonge Jacobus*, 1 Rob. 242.; *Neptunus*, 6 Rob. 409.; *Hoop*, 1 Rob. 196.

**CAVALRY,**

vessel fitted for conveying cavalry condemned (*Friendship*, 6 Rob. 421.).

**CERTIFICATE.** *Vide AFFIDAVIT.*

build of ship, 34. 63.

cheese (*Jonga Margaretha*, 1 Rob. 192.).

CERTIFICATE — *continued.*

- copper (*Charlotte*, 5 Rob. 276.).
- dimensions of ship, 52.
- goods, 131.
- false, obtained on false oath.
  - effect on return voyage, and character of witness (*Margaretha Magdalene*, 2 Rob. 140.).
- hemp (*Gute Gesellschaft*, 4 Rob. 95.).
- magistrates (*Maria*, 1 Rob. 371.).
- irregularity in granting (*Endraught*, 1 Rob. 25.).
- property of ship, 51. 111. 165. 178. 188.
- sale of cargo, 57.
- timber (*Endraught*, 1 Rob. 25.; *Twende Brodre*, 4 Rob. 33.).

## CHARTER PARTY, 64. 135. 142.

## CHEESE, xxxv.

- 164. (*Frau Margaretha*, 1 Rob. 192.).
- according to destination, if to naval port, condemned (*Jonge Margaretha*, 1 Rob. 195.; *Zelden Rust*, 6 Rob. 94.).
- if mercantile, restored (*Frau Margaretha*, 6 Rob. 92.).

## CIRCUMSTANCES,

- destination, use (*Jonge Margaretha*, 1 Rob. 195.).
- growth, produce (*Id.* 193.).
- port, mercantile or military (*Id.* 195.).
- state, native or manufactured (*Id.*).
- wants of enemy (*Id.*).

## CIVILIANS, passengers, lxi.

## CLAIM,

- affidavit, 30. 42. 130. 165. 189. 284.
  - not extending to whole, 116.
- allegation, pleading claim, 11.
- exceeding prayer, 116.
- neglect, subsequent admissibility on appeal, 32.
- for cargo by agent, 37.
- for ship, includes stores, &c., 111.
- for ship and cargo by master, 116.
- power to make, 79.
- property in same claim with contraband, condemned (*Oster Risocr*, 4 Rob. 200.).
- by whom.
  - agent, 26. 37. 287.
  - agent for master, 106.
  - master, 19. 28. 284.
  - owner, 280. 286.
  - shipper, 104.
- want of, 32.

- CLAPBOARD, 95.
- CLEARANCE, 34. 51. 55. 64. 104. 132. 138.
- CLEARING NOTE, 52.
- CLOVES,  
not contraband, 123.
- COALS, liii.  
*ancipitis usus*, 100.
- COCQUET, 152. 158. 185.
- COD, xxxvi. 90.
- COLOURABLE, 90. 93. 109. 145.
- COMMEATUS,  
119. 190 (*Haabet*, 2 Rob 182.).
- COMMISSION,  
to unlade and inspect, 181. 186.  
waived, 44.
- COMMISSIONERS  
of prize, report as to contraband, 71.
- COMPROMISE,  
agreement on part of governor of a colony to purchase cargo is not  
a compromise (*Richmond*, 5 Rob. 336.).
- COMPULSION,  
not admissible as excuse (*Orozembo*, 6 Rob. 435. ; *Seyerstadt*, 1 Dod.  
242.).
- CONCEALMENT,  
185, 186 (*Richmond*, 6 Rob. 328.).  
cannon, 145.
- CONDEMNATION,  
generally as prize, 45.  
destroying papers, ground of, 118. (But see *Madonna del Burso*,  
4 Rob. 183.).  
false papers, 104. 118.
- CONDITION, xxvii.
- CONDITIONAL,  
directions as to destination, act on point of being carried out, no con-  
fiscation, 137 (*Twende Brodre*, 4 Rob. 33. ).
- CONSIGNMENT,  
to enemy, transfer perfect, 46.
- CONTRABAND, 39. 198., *apta bello*, 46.  
declaration of crown, 40. 108.  
definition, xvii.  
active, xviii.  
passive (*Id.*).



**CONTRABAND — continued.**

- instruction to privateers, 49. 108.
- list of articles, xxxii.
- nature of articles, 198.
- notification, lxvii.
- practice of Admiralty Court (*Atalanta*, 6 Rob. 459.).
- search for, 2.
- taint, 67. 74. 108.
- treaty, lxi.
- what, xxii.

**CONVERSATION,**  
of master, 27. 31.**COPIES,**  
of papers, 87.  
admission of, 174.**COPPER, xliii.**  
ancipitis usus, contraband (*President*, 5 Rob. 277.).  
certificate on inspection (*Id.* 275.).  
description (*Express*, Stew. 294.; *Euphemia*, *id.* 566.).  
sheathing (*President*, 5 Rob. 276, 277.).  
report on (*Euphemia*, Stew. 569.).**CORDAGE, xlii.**  
contraband (*Jonge Margaretha*, 1 Rob. 195.; *Aramintha*, Stew. 47.).**CORDILLA, xlii.**  
hemp, 85.**CORN, xxxvii.**  
subject to pre-emption (*Haabet*, 2 Rob. 175. 182.).  
allowance of 10 per cent on invoice price (*Lucy*, 2 Rob. 209.).  
expenses generally allowed, unless where proof of property defective (*Minerva*, 2 Rob. 303.).**CORUNNA,**  
place of naval and military equipment, identified with Ferrol (*Zelden Rust*, 6 Rob. 95.).**COSTS,**  
captors' property restored, just cause of seizure, captors' costs allowed, 137 (*Goede Hoop*, Edw. 336.).  
just cause of seizure, but captors' costs refused, 129. *Vide Madonna del Burso*, 4 Rob. 183.**COSTS AND DAMAGES, 18.**  
incident to sentence of restitution, when no probable cause of seizure (*Barossa*, 1 Hag. 75. n.).**COURT,**  
principles as to contraband (*Atalanta*, 6 Rob. 459.).

COVERING enemy's property, 128

CROWN,

declaration as to contraband, 40.

instruction, 25.

notification, 36.

CUSTOMS,

officers, effect of clearance by, 154

D.

DAMAGE,

allegation, 14.

claims for, 15.

consequential (*Haabet*, 2 Rob. 183.).

incident to prise, 18.

particulars, 19.

DANTZICK, 33. 39.

allowed to export produce of neighbouring country, 39 (*Neutralitet*, 3 Rob. 296.; *Apollo*, 4 Rob. 164. n.).

DEALS, xlix. 105. 109. 145. 147.

contraband, 107.

not so, 133 (*Twende Brodre*, 4 Rob. 33.).

DECLARATION

of sovereign as to contraband, 40. 108.

DECREE,

interlocutory, 66. 111.

DEFENCE,

exception in favour of what necessary for defence of ship (*Charlotte*, 5 Rob. 306.).

DELICTUM,

must be actual—uniting act and intention, 82 (*Imina*, 3 Rob. 167.: *Lisette*, 6 Rob. 391.).

removed on change of intention (*Maria*, 1 Rob. 174.).

on change in nature of part (*Lisette*, 6 Rob. 391.; *Atalanta*, id. 457.).

not extend to return voyage (*United States*, Stew. 117.).

unless false papers (*Aramintha*, Stew. 47.; *Success*, id. 79. But see *Vreyheit* appeal, April 30. 1752.).

DELIVERY,

to claimers on bail, 149.

DEMURRAGE,

allowed against Government, when purchase abandoned and delay (*Zacheman*, 5 Rob. 154.).

## DESCRIPTION,

"neutral property" (*Apollo*, 4 Rob. 158.).

DESPATCHES, liv. (*Atalanta*, 7 Rob. 456.).

general principles (*Henry*, Stew. 494.).

what (*Caroline*, 6 Rob. 465.; *Rapid*, Edw. 230.).

nature (*Madisa*, Edw. 225, 226.).

commercial only (*Atalanta*, 6 Rob. 456.).

newspaper extract, Stew. 494.

receipt for (*Atalanta*, 6 Rob. 457.).

from enemy's colony to mother country, condemnation (*Atalanta*, 6 Rob. 440.; *Caroline*, 6 Rob. 465.).

from enemy's port to his consul in neutral country, no ground of condemnation (*Madisa*, Edw. 224.).

from agent of enemy to neutral port, to be forwarded to enemy's country, excused under the circumstance (*Rapid*, Edw. 228.).

from enemy's minister in neutral country to his government, no ground of condemnation (*Caroline*, 6 Rob. 465.).

carrying despatches no protection to ship otherwise illegally employed (*Drummond*, 1 Dod. 102.).

## DESTINATION, xix.

consideration of, xxxi. (*Jonge Margaretha*, 1 Rob. 195.; *Twende Brodre*, 4 Rob. 36.).

port of naval, military equipment, 74 (*Endraught*, 1 Rob. 25.; *Magnus*, 1 Rob. 31.; *Jonge Margaretha*, 1 Rob. 192.; *Twende Brodre*, 4 Rob. 36.).

commercial (*Jonge Margaretha*, 1 Rob. 195.).

enemy and neutral port in same bay, 32.

change, xix. xxi.

concealment, reason (*Sarah Christina*, 1 Rob. 241.).

course, proof of, 86. 102.

alternative (*Coneadic*, 1 Rob. 120.).

discretionary, xx. 49. 55. 136.

dissembled enemy's port, 101 (*Imina*, 3 Rob. 168.).

false, 101 (*Nancy*, 3 Rob. 125.; *Concordia*, 1 Rob. 119.).

false, condemnation (*Helen*, 3 Rob. 224.; *Jonge Jacobus*, 1 Rob. 242.; *Franklin*, 3 Rob. 217.; *Edward*, 4 Rob. 68.).

return voyage! effect on, condemnation (*Christiansberg*, 6 Rob. 382. n.).

but not if intermediate voyage, (*Id.*; see also DELICTUM).

further proof refused if false (*Caroline*, 3 Rob. 77.).

log book (*Edward*, 4 Rob. 68.).

master's evidence, importance of (*Id.*).

neutral, 89 (*Imina*, 3 Rob. 168.; *Sarah Christina*, 1 Rob. 239.; *Jonge Jacobus*, 1 Rob. 243.).

several, xxi.

there to be sold to enemy, 5.

**DESTINATION—continued.**

- presumption, 104.
- against, 86, 149 (*Sarah Christina*, 1 Rob. 238, 239.).
- pretended, *id.*
- Trinity masters' opinion taken (*Edward*, 4 Rob. 68.).
- ulterior no excuse (*Lisette*, 6 Rob. 391.).

**DESTROYING PAPERS,**

- ground of condemnation, 118 (but see *Madonna del Burso*, 4 Rob. 183.).

**DETENTION,**

- government condemned in demurrage, on abandonment of pre-emption (*Zacheman*, 5 Rob. 152.).

**DEVIATION,**

- in voyage, not easily admissible (*Sarah Christina*, 1 Rob. 241.).

**DISCHARGE,**

- of contraband, relieves from condemnation (*Immanuel*, 2 Rob. 195.).

**DISCLOSURE,**

- as to despatches, &c., ought to be made to captors (*Atalanta*, 6 Rob. 446.; *Caroline*, 6 Rob. 461. n.).

**DULLAGE, 109.****DUNNAGE,**

- (*Friendship*, 6 Rob. 422.)

**DUTCH SHIP, 1.****E.****EAST INDIES,**

- voyage there and back considered as one (*Nancy*, 3 Rob. 126.)

**EFFECT,**

- of contraband on property of same owner, condemnation, 74.
- on that of different, no condemnation (*Frederick Molka*, 1 Rob. 86.; *Oster Risoer*, 4 Rob. 199.).
- on ship (*Ringende Jacob*, 1 Rob. 90.; *Franklin*, 3 Rob. 221.).

**ENEMY,**

- port, going to (*Jonge Jacobus*, 1 Rob. 242.).
- from port to port of, 141.
- equipment, 40, 155.
- contraband, 108.

**ET SPECIALITER, 197.****EVIDENCE,**

- (*Henrick Marie*, 4 Rob. 57.).
- objection to, 31.

**Y**

EXAMINATION and papers, brought in not on oath, 106.

mate of prize not examined by captors, affidavit, 77.

EX OFFICIO,

court proceed, 173.

EXCEPTION, 191.

in treaty (*Trende Brodre*, 4 Rob. 86.).

effect, not to render articles at other times contraband (*Ringende Jacob*, 1 Rob. 92.).

EXPENSES,

captors' (*Vrow Henrica*, 4 Rob. 344.).

expenses given when master permitted to go to enemy's port, *Trende Brodre*, 4 Rob. 38.).

alteration in destination (*Imina*, 3 Rob. 170.).

article doubtful (*Gute Gesellschaft*, 4 Rob. 95.).

despatches, though in ignorance (*Rapid*, Edw. 231.).

further proof (*Christina Maria*, 4 Rob. 166.).

just cause, to prevent falling into enemies' hands (*Principe*, Edw. 70.).

just cause, 149. 153. 160.

just cause pronounced, but expenses refused on appeal, 129. 177.

paid out of cargo condemned, 163.

captors' expenses given, pre-emption allowed by government (*Christina Maria*, 4 Rob. 166.; *Jonge Jan*, 1 Dod. 455.).

good ground of suspicion, 153.

law expenses (*Vrow Henrica*, 4 Rob. 349.).

taking depositions (*Christina Maria*, 4 Rob. 166.).

claimant condemned in expenses (*Twende Brodre*, 4 Rob. 38.; *Ranger*, 6 Rob. 126.).

freight, preference (*Vrow Henrica*, 4 Rob. 347.).

freight and expenses usually refused (*Jonge Jacobus*, 1 Rob. 242.).

## F.

FALSE, 120. v. colourable.

destination, or papers condemnation of ship (*Neutralitel*, 3 Rob. 296.; *Franklin*, 6 Rob. 127.).

affect return voyage (*Aramantha*, Stew. 47., *Success*, id. 79.

but see DELICTUM.

bills of lading, 92. 120. 122.

FERROL,

identified with Corunna (*Zelden Rust*, 6 Rob. 95.).

**FIR**, xlii.balks (*Twende Brodre*, 4 Rob. 33.).

deals, 33.

planks not contraband (*Twende Brodre*, 4 Rob. 38.).except in Danish Treaty (*Endraught*, 1 Rob. 22.).timber (*Twende Brodre*, 4 Rob. 33.).**FISH**,salted (*Jonge Margaretta*, 1 Rob. 193.).**FLAX**,

not contraband, 123.

**FLOUR**, xxxvii.contraband (*Ranger*, 6 Rob. 126.).**FOOD**,articles of, contraband (*Jonge Margaretta*, 1 Rob. 193.).**FOREIGN**,

law, pleaded, 159.

explanation admitted, 160.

**FORFEITURE**,of ship, formerly, 83. (*Mercurius*, 1 Rob. 288.).now only of freight, and expenses, *id.*; *Emanuel*, *id.* 297.; *Neutralitet*, 3 Rob. 297.).**FREE SHIP**, 91.**FREIGHT**,allowed, contraband small (*Neptunus*, 3 Rob. 108.).part contraband, freight allowed on remainder (*Oster Risoer*, 4 Rob. 201.).

refused, 100. 109. 129. 135. 144. 147. 155.

ignorance no excuse (*Oster Risoer*, 4 Rob. 201.; *Jonge Jacobus*, 1 Rob. 242.; *Mercurius*, *id.* 288.; *Emanuel*, *id.* 297.; *Franklin*, 3 Rob. 218.; *Neutralitet*, 3 Rob. 297.).

## G.

**GAZETTE**,only authority admitted (*Immanuel*, 2 Rob. 195.).**GENERAL SHIP**, 150.**GOVERNMENT**,condemned in demurrage (*Sisters*, 5 Rob. 154.).**GOVERNMENT OFFICERS**,consideration with respect to costs (*Der Mohr*, 4 Rob. 317.; *Luna*, Edw. 191.; *Goede Hoop*, Edw. 336.; *San Juan*, 1 Hag. 270.; *Acteon*, 2 Dod. 54.).

## GRAPLING,

anchors, 157.

## GROWTH, 49. 108. 137. 155. 195.

favourable consideration (*Jonge Margareta*, 1 Rob. 193. ; *Franklin*, 3 Rob. 219.).neighbouring parts (*Neutralitet*, 3 Rob. 297.).*Vide* DANTZIG.*Vide* HANSE TOWNS.

## GUNS,

concealed, 25.

GUNPOWDER, 25. 185 (*Neptunus*, 6 Rob. 406. ; *Happy Couple*,

Stew. 65.).

not contraband if for ship's use, 146. 185.

## H.

## HANSE TOWNS,

produce of neighbouring country privileged (4 Rob. 355).

## HELGOLAND (1 Dod. Ap. A.).

HEMP, xlii. 109. 111. 114. (*Euphemia*, Stew. 567.).before 1656 doubtful, afterwards contraband (*Maria*, 1 Rob. 372. ; *Jonge Margareta*, 1 Rob. 195.).

only by instructions, 114.

contraband (*Floreat commercium*, 3 Rob. 178. ; *Franklin*, 3 Rob. 220. ; *Venus*, 4 Rob. 355.).by Danish Treaty (*Ringende Jacob*, 1 Rob. 90.).

cordilla,

not contraband (*Gute Gesellschaft*, 4 Rob. 95.).

pass hemp (4 Rob. 354.).

torse (*Gute Gesellschaft*, 4 Rob. 95.).bringing in, justified (*Id.* 95. n.).

## HERRINGS,

contraband, 170. (*Jonge Margareta*, 1 Rob. 193.).

## I.

## IDENTITY,

of claimant.

affidavit, 37.

## IGNORANCE,

of master not admissible as excuse (*Oster Risoer*, 4 Rob. 200. ; *Richmond*, 5 Rob. 333. ; *Oroxembo*, 6 Rob. 432. 435. 437.).

- IMPOSITION,**  
operates as force (*Orozembo*, 6 Rob. 435.).
- INNOCENT,**  
articles tainted, if property of same owner, 67. 108. 170.
- INSPECTION,**  
commission  
decreed, 44. 181.  
waived, *id.*  
proceeding on, 182.  
report on (*Eleonora*, 6 Rob. 331.)
- INSTRUCTIONS,** 9. 97. 107. 128. 197.  
articles of treaty, introduced in, 198.  
justify seizure, 49. 61.  
notification presumed, 108. 49.  
1693, 1704, 39.  
1706, 196. 205.  
1744 (*Charlotte*, 5 Rob. 309).  
1793 (*Immanuel*, 2 Rob. 193.).  
privateers bound to obey, 67.
- INSTRUMENTS,**  
contraband, according to circumstances (1 Rob. 195.).
- INTENTION,**  
as to stores (*Richmond*, 5 Rob. 335.).  
as to voyage (*Id.* 336.).  
intention and act must be united to constitute *delictum* (*Imina*, 3 Rob. 169.).
- INTERLOCUTORY,** 67.  
*Vide DECREE.*
- INTERPOSITION,**  
in war, effect (*Atalanta*, 6 Rob. 460.).
- INTERROGATORIES,**  
additional, 5. (*Friendship*, 6 Rob. 422.).  
" recommended (*Nancy*, 3 Rob. 137.).  
as to nature of cargo, 34. 68.  
private, inadmissible, 16. 27.  
second set, 68.
- INVALIDS,**  
conveyance of, when allowable (*Friendship*, 6 Rob. 428.).
- INVOICE,** 120.
- IRON,** xliv.  
contraband, 67.  
article of promiscuous use (*Ringende Jacob*, 1 Rob. 92.; *United States*, Stew. 118.).



**IRON — continued.**

favourably considered (*Jonge Margaretta*, 1 Rob. 195.).  
 in bars, 124. (*Ringende Jacob*, 1 Rob. 92.; *United States*, Stew. 118.;  
*Active*, *id.* 580.).  
 unwrought, may be contraband (*Ringende Jacob*, 1 Rob. 92.).  
 excepted in Danish Treaty (*Endraught*, 1 Rob. 22.).  
 manufactured, not so favourably considered (*Jonge Margaretta*, 1 Rob.  
 195.).

**J.****JOURNAL,**

none, 101.  
 false, 148.

**JURISDICTION,**

rebels, 79.

**JUST CAUSE, 56.**

part cargo condemned, 32.  
 costs refused, 98. 129.  
 costs given (*Asia Grande*, Edw. 47.).  
 destination uncertain, 137. 149 (*Twende Brodre*, 4 Rob. 38.).  
     changed (*Imina*, 3 Rob. 168.).  
 doubts, 40. 73. 153.  
 farther proof, 160.  
 no pass, 90.  
 part condemned, 74. 187.  
 part condemned and taken in part of expenses, 163.  
 property small, 166.  
 costs given, restitution under treaty, 133.  
 reversed on appeal, each party to pay own costs, 179.

**K.****KNOWLEDGE,**

of owner of ship, penalty dependent on (*Atalanta*, 6 Rob. 459.).  
*Vide* IGNORANCE.

**L.****LAST, 62.****LEAD,**

contraband, 37. 71. 129.  
 milled, 125.  
 pigs, 71.  
 shot, 186.  
 under treaty, 186.

LENDING,  
 ship, 119 (*Ringende Jacob*, 1 Rob. 90.).  
 LET PASS, 87.  
 LETTERS, lvi. 80. 143.  
 of attorney, 132.  
 LOG BOOK (*Christiansberg*, 6 Rob. 380.).

## M.

MAGISTRATES,  
 certificate as to contraband, 136.  
 MALA FIDES, 114 (*Ringende Jacob*, 1 Rob. 92.).  
 concealment of letters, or deviation from truth in formal papers not  
 necessarily (*Anna Catherine*, 4 Rob. 108.).  
 not to be presumed, 56.  
 dissembling quantity (*Richmond*, 5 Rob. 338.).  
 farther proof forfeited (*Nancy*, 3 Rob. 127.).  
 owners of ship, 112.  
 MANIFEST, 126. 131.  
 MASTS, 40 (*Imina*, 3 Rob. 167.).  
 contraband (*Charlotte*, 5 Rob. 314.).  
 boat (*Eleonora Wilhelmina*, 6 Rob. 331.).  
 hand-masts (*Id.* ; *Twende Brodre*, 4 Rob. 34.).  
 restored (*Neutralitet*, 3 Rob. 296.).  
 MASTER,  
 agent for ship (*Atalanta*, 6 Rob. 460. ; *Franklin*, 6 Rob. 126.).  
 not for cargo (*Imina*, 3 Rob. 170.).  
 cargo,  
 bound in time of war to know contents (*Oster Risoer*, 4 Rob.  
 200.).  
 disclosure,  
 bound to make (*Caroline*, 6 Rob. 461.).  
 evidence,  
 difference in, taken at different times, 181.  
 preferred (*Vrouw Elizabeth*, 5 Rob. 4.).  
 not under circumstances (*Susa*, 5 Rob. 260. ; but  
 see *Franklin*, 6 Rob. 423.).  
 ignorance (6 Rob. 427.).  
 not admissible as to receipt of papers (*Orozembo*, 6 Rob.  
 435. ; *Edw.* 229.).  
 oath, evidence of property, 121 (but see 6 Rob. 423.).  
 part owner, misconduct, 117. 122. (*Caroline*, 6 Rob. 461. ; *Richmond*,  
 5 Rob. 338.).

**MASTER** — *continued*.

private adventure, if not ingenuous disclosure, left to captors (*Orazembo* 6 Rob. 429.).

refused, false papers (*Christianberg*, 6 Rob. 381.).

refusal,

to deliver papers, 181.

to sign depositions, 181.

to speak to belief, 107.

to tell the name of lader (*Ranger*, 6 Rob. 126.).

representations (*Friendship*, 6 Rob. 423.).

"ship and master of country" (*Eleonora Wilhelmina*, 6 Rob. 334.).

ship, effect on, 49. 82.

suppression (*Friendship*, 6 Rob. 427.).

**MEAL**, xxxvii.**MERCHANDIZE**, 186.**METALS**, xliii. (*Euphemia*, Stew. 565.).**MILITARY PASSENGERS**, lx.**MONITION**,

to proceed, 105.

**MOORISH WITNESS** (*Annemur*, 3 Rob. 74.).**MOTION**,

for opening papers, &c., 9.

**MUNICIPAL LAW**, 153. 156 (*Fortune*, 1 Dod. 83, 84.).**MUSKET SHOT**,

genus, including all species of shot, 186.

**N.****NATIVE**,

commodity favourably considered (*Jonge Margareta*, 1 Rob. 194. ;  
*Franklin*, 3 Rob. 220.).

**NAVAL**,

stores 48. 64. 97. (*Neptunus*, 6 Rob. 408.).

excepted by treaty, 39.

**NAVIGATION**,

treaty relating to (*Apollo*, 4 Rob. 161.).

navigation and commerce (*Apollo*, 4 Rob. 161. ;  
*Charlotte*, 5 Rob. 306.).

**NECESSITY** (*Immanuel*, 2 Rob. 204. ; *Adam*, Edw. 306. ; *Curlew*, Stew. 322.).

moral (*Fanny*, Stew. 555.).

want of water (*Sarah Christina*, 1 Rob. 239.).

**NEIGHBOURHOOD**,

produce of, favourably considered (*Ocean*, 3 Rob. 297.).

as to Dantsic (*Apollo*, 4 Rob. 164.).

Hanse Towns (*Evert*, 4 Rob. 355.).

**NEUTRAL,**

- carrying despatches of enemy, illegal (*Caroline*, 6 Rob. 464.).
  - not, if from ambassador in neutral country (*Id.*).
- duty to aid neither belligerent, 108. (*Atalanta*, 6 Rob. 460.).
- interposition in war (*Id.*).
- letting out ship as transport, illegal (*Friendship*, 6 Rob. 428.).
- right (Stew. Ap. XXI.).
- ships (*Apollo*, 4 Rob. 161.; *Charlotte*, 5 Rob. 306.).
- trade (*Immanuel*, 2 Rob. 198.; *Friendship*, 6 Rob. 428.; *Fortuna*, 1 Dod. 83, 84.).

**NEWSPAPER,**

- extract (*Henry*, Stew. 494.).

**NITRE** (*Neptunus*, 6 Rob. 406.).

- NOTIFICATION**, 108. 153. 177. 195. 198 (*Twee Juffrowen*, 4 Rob. 243.).
  - manner (*Elsbe*, 5 Rob. 178.).
  - orders in council (*Fox*, Edw. 312.).

**O.****OAK,**

- planks, 33. li.
- timber (*Ringende Jacob*, 1 Rob. 92. a.).

**OB CONTINENTIAM DELICTI** (*Atalanta*, 6 Rob. 460.).**OFFER,**

- on part of captors entered on minutes, 159.

**OIL**, xxxviii.

- contraband (*Jonge Margareta*, 1 Rob. 192.).

**ONE,**

- article of contraband affects all property of the same owner (*President*, 5 Rob. 277.).

**ORDER IN COUNCIL**, 118. 128. n. 193 (*Boeder Lust*, 5 Rob. 246.; *Courier*, Edw. 249.; *Fox*, Edw. 313.).**ORDER OF COMMISSIONERS** of prize, 193.**OWNER,**

- master, agent for owner of ship, not of cargo, 82 (*Imina*, 3 Rob. 170.).
  - part owner, condemnation, 119. 122.
- privity (*Orozembo*, 6 Rob. 435.; *Atalanta*, 6 Rob. 459.; *Ocean*, 3 Rob. 297.).
- affidavit as to privity ordered to be brought in, but not produced, 112.
- not privity, exonerated, 115.
- same, all property condemned, 74 (*President*, 5 Rob. 277.).

OWNER—*continued.*

- different, innocent articles restored (*Oster Risør*, 4 Rob. 199.).
- cargo and ship, same, both condemned (*Neutralitet*, 3 Rob. 296.;  
*Stadit Embden*, 1 Rob. 31. n.; *Jonge Margaretha*, 1 Rob. 196.).
- ship restored under circumstances (*Id.*; *Neptunus*, 6 Rob. 409.).
- „ condemned for carrying despatches, cargo belonging to same  
owner restored (*Caroline*, 6 Rob. 462.).
- part of ship condemned property of owner, if contraband, but which  
was not claimed (*Jonge Tobias*, 1 Rob. 829.).

## P.

## PACKET,

- despatches (*Atalanta*, 6 Rob. 446.).

## PAINT, 123.

## PAPERS, 50. 151.

- abstract, 10.
- affidavit, none, 106.
- concealment, 9 (*Atalanta*, 6 Rob. 444.; *Friendship*, 6 Rob. 427.).
- destroying, 10.
- enumerated (*Nancy*, 3 Rob. 122.).
- false, 118.
- loss, supplied, 174.
- opened, 7.
- search for (*Atalanta*, 6 Rob. 442.).
- to send on board for, belligerent right (*Marie*, 1 Rob. 371.).

## PART-OWNER,

*Vide* MASTER.

*Vide* OWNER.

- generally bound by the character of the ship (*Vrouw Elizabeth*, 5 Rob. 16.; *Industrie*, Adm. Pr. Cases, 54.).
- exception under order in council (*Id.* 7.).
- share condemned, owner of unclaimed contraband (*Jonge Tobias*, 1 Rob. 331.).

## PASS, 34. 120. 126. 138. 166.

- left at Elsineur, 110.
- not on board according to treaty, 119.
- not on board according to treaty justify seizure (88. 119. 198.; *Stockholm*, Stew. 379. 544.
- Swedish Treaty, 54. 59. 197. 205.

## PASSPORT, 59. 69. 139.

- want of, 58. 62. 193. 196.

- PASSENGERS**, lix (*Madison*, Edw. 225.; *Drummond*, 1 Dod. 104.).  
 civilian (*Orozembo*, 6 Rob. 433.).  
 invalid soldiers, &c. (*Friendship*, 6 Rob. 428.; *Rose in Bloom*, 1 Dod. 58.).  
 military (*Friendship*, 6 Rob. 428.; *Orozembo*, 6 Rob. 433. 7.).  
 number immaterial (*Orozembo*, 6 Rob. 433. 7.).  
 conveyance, entails, forfeiture of ship (*Friendship*, 6 Rob. 428.; *Orozembo*, id. 435.; *Drummond*, 1 Dod. 105.).  
 as to effect on cargo, *vide Caroline*, 6 Rob. 462.
- PASS-HEMP**, 4 Rob. 354. xliii.
- PENALTY**, lxi.
- anciently condemnation of ship and cargo (*Ringende Jacob*, 1 Rob. 90.; *Jonge Tobias*, 1 Rob. 329.; *Mercurius*, 1 Rob. 288. n.; *Franklin*, 3 Rob. 221. n.; *Neutralitet*, 3 Rob. 296.).
  - relaxation in fair cases (*Franklin*, 3 Rob. 222, 223.).
  - but not when false papers or destination (*Ringende Jacob*, 1 Rob. 91.; *Neutralitet*, 3 Rob. 296.).
  - in favour of native produce (*Sarah Christina*, 1 Rob. 241.; *Franklin*, 3 Rob. 222, 223.).
  - where property belongs to different owners, only contraband condemned (*Stadt Embden*, 1 Rob. 31.; *Oster Risoer*, 4 Rob. 200.).
  - same owner, cargo and ship condemned (*Ringende Jacob*, 1 Rob. 91.; *Jonge Margaretha*, 1 Rob. 196.; *Sarah Christina*, 1 Rob. 242.; *Floreat Commmercium*, 3 Rob. 178.; *Neutralitet*, 3 Rob. 296.; *Richmond*, 5 Rob. 328.; *Eleonora Wilhelmina*, 6 Rob. 334.).
  - ship restored under circumstances (*Sarah Christina*, 1 Rob. 242.).
  - cargo and part of ship (*Jonge Tobias*, 1 Rob. 329.).
  - cargo, part belonging to the same owner, 112. 147. (*Sarah Christina*, 1 Rob. 242.; *Eleonora Wilhelmina*, 6 Rob. 334.; *Neptunus*, 6 Rob. 410.; *Atalanta*, id. 460.).
  - innocent part restored under circumstances (*Jonge Margaretha*, 1 Rob. 196.).
  - freight and expenses forfeited (*Ringende Jacob*, 1 Rob. 91.; *Neutralitet*, 3 Rob. 297.; *Sarah Christina*, 1 Rob. 242.).
  - for innocent parts, freight allowed under circumstances (*Oster Risoer*, 4 Rob. 200.).
- PEPPER**, 124. 166.
- PIPE STAVES**, li. 33. 108.
- PITCH AND TAR**, xlv.
- doubtful before 1656, afterwards contraband (*Maria*, 1 Rob. 372. Sir Leoline Jenkin's opinion, 195.; *Twee Juffrowen*, 4 Rob. 243.).
  - discussion thereon between England and Sweden (*Neptunus*, 6 Rob. 405.).
  - contraband, 58. 60, 61, 62. 67. 147. 193. 197. 199.
  - instructions, 61. 67. 199.
  - order of prize commissioners, 192. (*Sarah Christina*, 1 Rob. 241.; *Richmond*, 5 Rob. 328.; *Stadt Embden*, 1 Rob. 30.).

PITCH AND TAR — *continued.*

- naval stores (*Neptunus*, 6 Rob. 408.).
- native produce on board ship of same country formerly condemned, 191 (*Maria*, 1 Rob. 373.).
- now excepted (*Christina Maria*, 4 Rob. 166.).
- native produce, on board foreign ship, excepted (*Apollo*, 4 Rob. 164.).
- subject to pre-emption (*Maria*, 1 Rob. 373.; *Twee Juffrowen*, 4 Rob. 243.).
- by treaty with Sweden (*Neptunus*, 6 Rob. 405.).

## PLAKAART, 156. 159.

PLANCHE DE SAPIN (*Twende Brodre*, 4 Rob. 36.).PLANKS, *xlix.*

- contraband, 45. 67. 74. 105.
- not, 133.

## PLEA AND PROOF,

- importance of (*Magnus*, 1 Rob. 35.).

## PORT,

- convenient, 193 (*Washington*, 6 Rob. 280.).
- of destination, change in character (*Atalanta*, 6 Rob. 457.).
- from port to port of enemy, 141. 190 (*Edward*, 4 Rob. 70.).
- nature of importance (*Jonge Margareta*, 1 Rob. 194.; *Twende Brodre*, 4 Rob. 36.; *Nostra Signora de Begona*, 5 Rob. 98.; *United States*, Stew. 118.).
- naval equipment, 74. 108 (*Edward*, 4 Rob. 70.).
- neutral (*Imina*, 3 Rob. 168.).
- proof, locality of capture (*Edward*, 4 Rob. 70.; *Sarah Christina*, 1 Rob. 239.).
- in the same bay, identified, 32 (*Zelden Rust*, 6 Rob. 95.).
- not of, if separated by headland (*Frau Margareta*, 6 Rob. 92.).

## POTASH,

- not contraband, 170.

## PRAYER

- of parties, 30.

PRE-EMPTION, *xxix.* 203 (*Sarah Christina*, 1 Rob. 341.; *Maria*, 1 Rob. 373.; *Haabet*, 2 Rob. 182.; *Curlew*, Stew. 320.).

- abandoned, demurrage allowed (*Sisters*, 5 Rob. 154.).
- captors' expenses paid (*Twende Brodre*, 4 Rob. 38.; *Christina Maria*, *id.* 166.; *Jonge Jan*, 1 Dod. 455.).
- claimant condemned in expenses, alternative destination (*Twende Brodre*, 4 Rob. 38.).
- expenses not allowed on defect in proof (*Minerva*, 2 Rob. 303.).
- mixed cargo all taken (*Jonge Jan*, 1 Dod. 458.).
- naval stores (*Jonge Jan*, 1 Dod. 455.).

**PRE-EMPTION — continued.**

- payment, valuation formerly by merchant named on each side, *Mar.*  
Adm. Dec. 103. 142. 170.
- original price and fair profit (*Haabet*, 2 Rob. 176. 182.; *Jonge*  
*Jan*, 1 Dod. 458.).
- invoice price and 10 per cent. profit (*Haabet*, 2 Rob. 175.;  
*Lucy*, 3 Rob. 209.).
- freight included (*Mar.*, 170.; *Lucy*, 3 Rob. 110.).
- insurance, not paid, disallowed (*Haabet*, 2 Rob. 175.).
- expenses allowed (*Mar.*, 170.; *Minerva*, 2 Rob. 303.).
- proceeding manner of (*Jonge Jan*, 1 Dod. 458.).

**PRESUMPTION,**

- as to produce (*Apollo*, 4 Rob. 164.; *Twee Juffrowen*, *id.* 244.).

**PRIMAGE, 126.****PRISONER,**

- concealment of passengers under fear of their becoming prisoners, not  
admissible (*Atalanta*, 6 Rob. 445.).

**PRIVATEERS,**

- ignorance of treaties, 98.
- instructions, obedience to, 199.

**PRIVILEGE**

- of treaty, not extend to cargo on board ship of another country, 190.

**PRIVITY.**

*Vide OWNERS.*

**PRIZE,**

- brought in *as*, 115.
- prize act, 197.
- grant of, *id.*

**PROBABLE CAUSE** (as to, see Adm. Pr. Report, 177.; Kent's Com.  
vol. i. p. 156.; Taylor's Evidence, p. 309. 75.).**PROCEEDING,**

- manner, 15.
- taking evidence (*Apollo*, 5 Rob. 288.).

**PRODUCE**

- of ally of enemy in war (*Jonge Margaretha*, 1 Rob. 192.).
- native, 49. 195.
- formerly not considered (*Staat Embden*, 1 Rob. 30.).
- now ground of restitution by convention (*Euphemia*, Stew. 564.).
- of exporting country (*Twee Juffrowen*, 4 Rob. 243.).
- claimant country (*Sarah Christina*, 1 Rob. 241.; *Franklin*, 3 Rob. 219.).
- on board ship of own country (*Apollo*, 4 Rob. 164.).
- on board foreign ship (*Id.*)
- neighbouring country, 39 (*Neutralitet*, 3 Rob. 297.; *Apollo*, 4 Rob.  
164.).



**PRODUCE—continued**

- Hanse Towns, usual trade (*Evert*, 4 Rob. 355.).
- hemp (*Apollo*, 4 Rob. 164.).
- manufactured articles (*Neptunus*, 6 Rob. 406.).
- pitch and tar, produce of Sweden, formerly contraband, but now subject to pre-emption (*Maria*, 1 Rb. 373.; *Neptunus*, 6 Rob. 405.).
- presumption (*Apollo*, 4 Rob. 164.; *Twée Juffrowen*, *id.* 243.).
- proof on claimant (*Twée Juffrowen*, 4 Rob. 242.; *Evert*, 4 Rob. 355.).

**PROMISCUI USUS**, xxvi. 48. (*Ringende Jacob*, 1 Rob. 92.).**PROOF,**

- attestation, 127.
- burden on captors, 133.
- on claimant as to produce. *Vide* **PRODUCE**.
- certificate on oath, not admissible as proof (*Endraught*, 1 Rob. 25.).
- conduct of parties (*Atalanta*, 6 Rob. 453.).
- place of capture (*Edward*, 4 Rob. 70.).

**PROPERTY,**

- "or his assigns," 45.
- cleared as claimant's property, 141.
- different owners, 67.
- endorsement to consignee (*Neptunus*, 6 Rob. 409.).
- on board foreign ship, 163.

**PROTEST**, 34.

- received as evidence, 18.

**PROVISIONS**, xxxii. (*Haabet*, 2 Rob. 182.)

- contraband, 93. 119. 170. 190.
- when contraband (*Jonge Margareta*, 1 Rob. 188.).
- probable destination (*Id.* 194.).
- port of naval equipment (*Id.* 195.).
- pre-emption (*Haabet*, 2 Rob. 182.).
- public service, contraband, 169.

**PUBLIC SERVICE,**

- proof of being in (*Friendship*, 6 Rob. 427.).

**Q.****QUANTITY**, xxviii. (*Richmond*, 5 Rob. 328.; *United States*, *Stew.* 121.).

- large, condemned, 175.
- small, not condemned, 163. 166. 187. 190.
- stores, whether to be considered such (*Margareta*, 2 Rob. 140.; *Richmond*, 5 Rob. 335.).

**QUASI, CONTRABAND.**

- carrying soldiers, despatches, &c. (*Friendship*, 6 Rob. 421.; *Drummond*, 1 Dod. 103.).

## R.

**RAW MATERIALS,**

favourably considered (*Euphemia*, Stew. 567.).

**REBELS, 75.****RECEIPTS, 131. 188.****REFERENCE,**

as to nature of article,

cheese (*Jonge Margaretta*, 1 Rob. 191.).

hemp (*Evert*, 4 Rob. 354.).

iron (*Ringende Jacob*, 1 Rob. 92.; *United States*, Stew. 118.).

ship timber (*Endraught*, 1 Rob. 25.; *Ringende Jacob*, 1 Rob. 92.;

*Twende Brodre*, 4 Rob. 35.; *Eleonora*, 6 Rob. 331.).

return on oath (*United States*, Stew. 118.).

report (*Eleonora*, 6 Rob. 331—334.).

**REGISTRAR AND MERCHANT,**

reference to (*Haabet*, 2 Rob. 179.).

**RELAND,**

contraband, 151. (*Araminta*, Stew. 48.).

**RESIDENCE,**

*bonâ fide* required (*Endraught*, 1 Rob. 25.).

**RESIDENT,**

a British subject resident in enemy's country may trade generally with enemy, but not in contraband (*Neptunus*, 6 Rob. 408.).

**RESTITUTION,**

conditional, on bail to sell in particular country, 56.

in England, 98. 203.

**RETURN,**

vessel not generally liable, in case of contraband, on return voyage, 82. 152. (*Imina*, 3 Rob. 168.; *Christiansberg*, 6 Rob. 381.; *United States*, Stew. 117.).

all taint not removed by discharge of contraband (*Margaretta*, 2 Rob. 140.).

exception in case of voyage to East Indies (*Nancy*, 3 Rob. 125.; see also *Araminta*, Stew. 47.).

but liable to condemnation if false papers, &c., on outward voyage, 82. 152.; *Rosalie and Betty*, 3 Rob. 343.; appeal, May 6. 1802.; *Lisette*, 6 Rob. 392.; *Araminta*, Stew. 47.).

not after intermediate voyage (*Christiansberg*, 6 Rob. 381. n.).

despatches (*Atalanta*, 6 Rob. 457.).

**RICE, xxxviii.**

contraband, 170 (*Jonge Margaretta*, 1 Rob. 193.).

**ROLL OF EQUIPAGE, 34. 107.**

- ROPE**,  
     material for making, contraband (*Immanuel*, 2 Rob. 195. ; *Euphemia*,  
     Stew. 567.).
- ROSIN**, xlvii. 137.  
     destination to be considered (*Nostra Signora de Begona*, 5 Rob. 98.  
     *Araminta*, Stew. 47.).
- BUCKERS**, li. (*Eleonora*, 6 Rob. 331.).
- RUSSIA**,  
     ship, 94. 97. *Vide* TREATY.

## S.

- SAIL CLOTH**, xlvii.  
     contraband under all circumstances (*Neptunus*, 3 Rob. 108. ; *Oster*  
     *Risoer*, 4 Rob. 199.).  
     by Danish Treaty, 239.
- SALE**,  
     restitution on bail to sell abroad, 55.  
     in England, 203. 98. 137.  
     not in enemy's port, 55. 203.  
     certified, 55. 57.
- SALMON**, xxxviii.  
     contraband, 90 (*Jonge Margareta*, 1 Rob. 193.).
- SALT**, xxxviii.  
     contraband, 144. 191.  
     except by Dutch Treaty, 191.
- SALTED**, xxxviii.  
     beef contraband (*Jonge Margareta*, 1 Rob. 189.).  
     cod (*Id.* 193.).  
     herrings, *id.*
- SALTPETRE**,  
     contraband, 71. 187.  
     by Danish Treaty, 239.
- SAME**,  
     all property belonging to same owners of contraband condemned,  
     112. 147. 170.  
     *Vide* OWNER.
- SCABBARD**, 39.
- SEARCH**, 2.  
     Hautefeuille, tom. iv., p. 123.  
     Wheaton, international law, p. 587 (*Maria*, 1 Rob. 367. ; *Immanuel*,  
     2 Rob. 196. ; *Margareta*, 2 Rob. 139.).

**SECRETARY OF STATE,**

communication with, 174.

correspondence with foreign minister (*Elseba*, 5 Rob. 178.; *Neptunus*, 6 Rob. 403. 408.).**SECURITY,**

on inspection, 181.

on removal, 44.

sale, 55. 59.

**SEPARATION,**ship and goods, freight allowed (*Oster Rincer*, 4 Rob. 200.).by act of unlivery (*Hoffnung*, 6 Rob. 234.).**SHEATHING COPPER,***Enrom*, 2 Rob. 6.; *Express*, Stew. 294.; *Euphemia*, id. 566.**SHIP,**built for war contraband (*Richmond*, 5 Rob. 331.).character (*Friendship*, 6 Rob. 425.).

condemned, 49. 59. 64. 67. 118. 191.

master part owner, 60.

according to ancient practice (*Ringende Jacob*, 1 Rob. 91.; *Jonge Margareta*, 1 Rob. 189.; *Neutralitet*, 3 Rob. 296.).not according to modern practice in fair cases (*Ringende Jacob*, 1 Rob. 91.; *Franklin*, 3 Rob. 223.; *Neutralitet*, 3 Rob. 296.).despatches, carrying condemned (*Atalanta*, 6 Rob. 459.).false destination or papers condemned (*Franklin*, 3 Rob. 224.; *Neutralitet*, id. 296.; *Edward*, 4 Rob. 70.; *Ranger*, 6 Rob. 126.).foreign may be employed (*Apollo*, 4 Rob. 164.).

privity of master charterer of vessel, condemned, 49.

privity of owners (*Neutralitet*, 3 Rob. 297.; *Atalanta*, 6 Rob. 459.).treaty, breach of (*Neutralitet*, 3 Rob. 297.).purchase, intended of another ship, no excuse for excess of stores (*Margareta*, 2 Rob. 140.).Russian Treaty, cargo must be on board Russian ship (*Charlotte*, 5 Rob. 307.).same owner of ship and contraband cargo, both condemned (*Sarah Christina*, 1 Rob. 242.; *Immanuel*, 2 Rob. 206.; *Floreat Commecium*, 3 Rob. 178.).excused under circumstances (*Jonge Margareta*, 1 Rob. 196.; *Neptunus*, 6 Rob. 410.).separated. *Vide* SEPARATION.treaty, breach of, effect on (*Neutralitet*, 3 Rob. 297.).**SHIPS' PAPERS, 34. 70.***Vide* PAPERS.**SHIPTIMBER,**contraband (*Endraught*, 1 Rob. 25.; *Imina*, 3 Rob. 167.; *Twende Brodre*, 4 Rob. 36.).

SHOT, 25. 185, 186

SMALL,

small quantity admitted as ground for restitution.

*Vide* QUANTITY.

SOAP, 170.

SOLDIERS,

conveyance of (*Friendship*, 6 Rob. 421.).

exception in favour of invalids, (*Id.* 428.).

SPAIN,

treaty (*Euphemia*, Stew. 567.).

SPARS, lii.

contraband, 155 (*Eleonora Wilhelmina*, 6 Rob. 331.; *Jonge Jan*, 1 Dod. 454.).

restored (*Twende Brodre*, 4 Rob. 36.).

SPECIALIT ER, 197.

STAPLE,

*Twes Juffrowen*, 4 Rob. 243.

STATUTES,

12 C. 2., c. 18. § 8. 149.

6 Anne, 197.

13 Geo. 2., 31.

STAVES, lii.

condemned, 67 (*Friendship*, 6 Rob. 428.).

STEEL, xliv.

not contraband, 58 (*Euphemia*, Stew. 566.).

STORES, xxxix.

contraband (*Staat Embden*, 1 Rob. 31.).

naval, xli.

pitch and tar (*Neptunus*, 6 Rob. 408.).

quantity to be considered (*Richmond*, 5 Rob. 335.).

reference as to nature (*Ringende Jacob*, 1 Rob. 92 a.).

ship's use (*Margaretta*, 2 Rob. 140.).

pretence (*Margaretta*, 2 Rob. 140.).

warlike, xl.

SULPHUR (*Neptunus*, 6 Rob. 406.).

SUPERCARGO,

(*Atalanta*, 6 Rob. 441, 6.).

two (*Orozembo*, 6 Rob. 437.).

suspicion, 153.

SWEDEN,

*Vide* TREATY.

monies, &c., 62.

## T.

TAINT, lxxi.

TAILLOW, xlviii.

contraband, if going to port of naval equipment (*Neptunus*, 3 Rob. 108.).

TAR, xlviii.

formerly not generally contraband (*Neptunus*, 6 Rob. 405.; *Twee Juffrouwen*, 4 Rob. 243.).

about 1656, declared contraband (*Maria*, 1 Rob. 372.).

contraband, 141. 147. 191. (*Sarah Christina*, 1 Rob. 241.; *Jonge Tobias*, 1 Rob. 329.; *Staat Embden*, 1 Rob. 30.).

produce of claimant country no excuse (*Staat Embden*, 1 Rob. 31.).

but now subject to pre-emption (*Sarah Christina*, 1 Rob. 241.; *Christina Maria*, 4 Rob. 166.; *Neptunus*, 6 Rob. 405.).

Danish Treaty (*Eenrom*, 2 Rob. 6.; *Neutralitet*, 3 Rob. 296.).

naval stores (*Neptunus*, 6 Rob. 407.).

Sweden (*Neptunus*, 6 Rob. 405.; *Maria*, 1 Rob. 373.; *Imina*, 3 Rob. 167.; *Twende Brodre*, 4 Rob. 36.).

TIMBER, xlviii.

contraband, 67. 105. 141.

although growth of country, 108. 155.

nature, affidavit, 42.

interrogatories, 34. 68.

reference (*Endraught*, 1 Rob. 25.).

TOBACCO, liii. 86. 149,

TOLL BRIEF, 63.

TORSE or CORDILLA, xlii.

hemp (*Gute Gesellschaft*, 4 Rob. 95.).

TRADE,

from port to port of enemy, illegal, 177.

British subjects settled in enemy's country may not trade in contraband (*Neptunus*, 6 Rob. 408.; *Ann*, 1 Dod. 223.).

passengers, conveyance of (*Rose in Bloom*, 1 Dod. 58.).

contrary to general law of nations (*Fortuna*, 1 Dod. 85.).

license, effect on character of (*Neptunus*, 6 Rob. 410.).

TRANSLATION,

false, 160.

TRANSPORT, lx. (*Friendship*, 6 Rob. 421. 425.; *Orozembo*, id. 433.).

TREATY,

construction (48. 65. 93. 97. 98.; *Maria*, 1 Rob. 373.; *Twende Brodre*, 4 Rob. 35. 36.).

contraband (*Vryheid*, Mar. 188.; *Stma. Coraço*, 2 Acton, 91.; (*Apollo*, 4 Rob. 158.; *Charlotte*, 5 Rob. 275. 304.; *Eleonora*, 6 Rob. 831.; *Neptunus*, id. 403.).

## TREATY—continued.

exception, 191.

but see *Ringende Jacob*, 1 Rob. 92.

power over subjects (*Eenrom*, 2 Rob. 6.).

violation of, deprives of national character (*Eenrom*, 2 Rob. 6.; *Neutralitet*, 3 Rob. 297.).

America (*Twende Brodre*, 4 Rob. 33., Am. Ed.; *Richmond*, 5 Rob. 328.).

Denmark (*Endraught*, 1 Rob. 25.; *Emanuel*, 1 Rob. 302.; *Einigheden*, id. 324.; *Eenrom*, 2 Rob. 6.; *Conqueror*, id. 307.; *Nancy*, 3 Rob. 125.; *Neutralitet*, id. 296, 297.; *Apollo*, 4 Rob. 158.).

1670, art. 40. 46. 48.

1780, explanatory act (*Maria*, 1 Rob. 372.; *Endraught*, 1 Rob. 22.; *Ringende Jacob*, 1 Rob. 90.; *Twende Brodre*, 4 Rob. 35.).

Dutch, 1667, 31. 175 (*Annemur*, 3 Rob. 74 n.).

1674, 7. 17. 128. 135. 144. 152. 158. 175. 186. 191. (*Marianna*, 6 Rob. 30 n.).

1675, explanatory act (*Annemur*, 3 Rob. 74 n.; *Nostra Signora*, 6 Rob. 42.).

Morocco, 1761, 1783 (*Annemur*, 3 Rob. 72.).

Portugal (*Flora*, 6 Rob. 360.).

1641, 92.

1654, 92, 93. 133 (*Nostra Signora*, 6 Rob. 41.).

Russian, 1734, 95. 97 (*Charlotte*, 5 Rob. 309.).

1766 (id. 307.).

1793 (*Charlotte*, 5 Rob. 311.).

1797 (id. 307.).

1801 (*Apollo*, 4 Rob. 161.).

Spain, 195.

Sweden, 65 (*Neptunus*, 6 Rob. 405.).

1654, 59. 121.

1656, 59. 121 (*Maria*, 1 Rob. 373.).

1661, 54. 66. 121. 175. 191. 194. 197. 205 (*Maria*, 1 Rob. 370.; *Gustava*, Stew. 544.; *Active*, id. 580.).

1664, 66.

1720, 190.

1803 (*Zacheman*, 5 Rob. 152.; *Charlotte*, id. 275.).

Utrecht, 31. 175.

## TRINITY MASTERS,

opinion as to destination from entry in log (*Edward*, 4 Rob. 68.).

## TRUNNELS,

or tree-nails, 35.

## TURK'S PASS, 150.

## U.

## UNCLAIMED,

condemned, 32. 99. 122. 135.

## UNLIVERY, 146.

UNMANUFACTURED (*Jonge Margaretta*, 1 Rob. 195.).

## UNMOORED,

commencement of voyage (*Richmond*, 5 Rob. 336.).

USE (*Jonge Margaretta*, 1 Rob. 195.).

promiscuous (*Ringende Jacob*, 1 Rob. 92.).

stores for ship's use, quantity (*Richmond*, 5 Rob. 335.).

not to be sold (*Margaretta*, 2 Rob. 140.).

## V.

## VARIATION,

on voyage, relieves from penalty (*Imina*, 3 Rob. 168.).

if to enemy's port, condemnation (*Twendre Brodre*, 4 Rob. 38.).

## VISITE,

*Vide* Hautefeuille, vol. iv. p. 126.

*Vide* SEARCH.

## VOYAGE,

conditional (*Twende Brodre*, 4 Rob. 38.).

completed (*Richmond*, 5 Rob. 336.).

discretion (*Twende Brodre*, 4 Rob. 38.).

East Indian, outward and return voyage considered one (*Nancy*, 3 Rob. 126.).

European, outward and return voyage considered distinct (*Id.*).

from port to port of enemy, 177 (*Edward*, 4 Rob. 70.).

evidence from place of capture (*Edward*, 4 Rob. 70.).

intention (*Richmond*, 5 Rob. 336.).

outward, taint of contraband on outward voyage still to some extent remains (*Margaretta*, 2 Rob. 140.; *Nancy*, 3 Rob. 126.).

return, liability not generally attach to return voyage (*Imina*, 3 Rob. 168.).

but does under circumstances, as of *mala fides* (*Id.*).

*mala fides* (*Margaretta*, 2 Rob. 140.; *Nancy*, 3 Rob. 127.).

false papers (*Rosalie* and *Etizubeth*, 6 May, 1802, 4 Rob., cases on appeal).

variation relieves from penalty (*Imina*, 3 Rob. 169.).



## W.

WALES, liii. 34.

WANT,

of water (*Sarah Christina*, 1 Rob. 239.).

WAX, liv.

WHEAT, xxxvii.

contraband, 100. 104. 122.

pre-emption (*Haabet*, 2 Rob. 175.).

WINE, xxxix. 177.

contraband, 119. (*Jonge Margareta*, 1 Rob. 192.; *Edward*, 4 Rob. 68.).

WITNESS,

difference on depositions, 181.

irregular examinations admitted (*Richmond*, 5 Rob. 330.).

mate, not examined by captors, affidavit, 77.

Mooriah witnesses sworn on Gospel, admitted under circumstances (*Annemur*, 3 Rob. 74 ).

passenger, 167.

refusal to sign depositions, 142. 181.

WOOD, liii.

heavy, fit for shipping, condemned, 139 141.

THE END.









